

No. 11267

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

W. C. and AGNES GRAHAM, doing business as
GRAHAM SHIP REPAIR CO.,
Respondents.

Transcript of Record

Upon Petition for Enforcement of Order of the
National Labor Relations Board

FILED

JUL 5 1946

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1-A

United States of America
Before the National Labor Relations Board
20th Region

Case No. 20-C-1304

In the Matter of—

W. C. and AGNES B. GRAHAM, d/b/a
GRAHAM SHIP REPAIR CO.,

and

EAST BAY UNION OF MACHINISTS,
LOCAL 1304, C.I.O.

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that W. C. and Agnes B. Graham, d/b/a Graham Ship Repair Co., at 501 1st Street (Foot of Washington), Oakland, Calif., employing 125 workers in ship repair, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) and (5) of said Act, in that on or about January 25, 1945, it, by its officers, agents, and employees signed a closed shop contract with the Bay Cities Metal Trades Council allegedly covering all its employees including machinist employees at its Oakland, California, yard at a time when all its machinist employees were members of and represented by East Bay Union of Machinists, C.I.O.

By signing said contract and by proceeding to enforce the provisions thereof, it, by its officers, agents, and employees, discriminated in regard to hire and tenure of employment and terms and conditions of employment of its machinist employees, namely, Frank Schaffer, Jim Potter, Elga Ashcraft, Gustov Berness, Tom Wright, B. F. Clark, Jim H. Clark, Bill Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis Whatley, Lloyd M. Lee.

On or about January 25, 1945, and at all times thereafter, it, by its officers, agents and employees refused to bargain collectively with the authorized representatives of East Bay Union of Machinists, C.I.O., a labor organization chosen by a majority of its machinist employees at its Oakland, California, yard for collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

On or about January 25, 1945, the Company's machinist employees named above ceased work as a consequence of the Company's unfair labor practices.

By the acts set forth in the paragraphs above, by threats to lock out C.I.O. machinists, and by replacing C.I.O. machinist members with members of unions affiliated with Bay Cities Metal Trades Council, and by other acts and conduct, it, by its officers, agents, and employees interfered with, restrained, and coerced its employees in the exercise of the

rights guaranteed in Section 7 of the Act in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

EAST BAY UNION OF MACHINISTS,
LOCAL 1304, C.I.O.

By /s/ JAMES P. SMITH,

Business Agent, 560 11th Street, Oakland, Calif.

Subscribed and sworn to before me this 2nd day of March, 1945, at San Francisco, California.

/s/ WALLACE E. ROYSTER,
Attorney, 20th Region.

BOARD'S EXHIBIT No. 1-B

[Title of Board and Cause.]

COMPLAINT

It having been charged by East Bay Union of Machinists, Local 1304, C.I.O., Oakland, California, hereinafter called the Union, that W. C. and Agnes B. Graham, co-partners doing business as Graham

Ship Repair Co., Oakland, California, hereinafter called respondents, have engaged in and are now engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 3, as amended, Article IV, Section 1, hereby alleges the following:

I.

Respondents, W. C. and Agnes B. Graham, are and at all times herein mentioned have been co-partners engaged, under the trade name of Graham Ship Repair Co., in the operation of a yard in Oakland, California, for the repair and conversion of seagoing vessels under contracts with the United States Navy, United States Army, and the War Shipping Administration. All of the ships thus repaired and converted by respondents are used for the transportation of passengers and materials in interstate and foreign commerce.

II.

Respondents, during the course and conduct of their business cause, and continuously have caused, large quantities of machinery, machine parts and supplies to be purchased and transported in interstate commerce from and through States of the United States other than the State of California to their ship repair yard in Oakland.

III.

The Bay Cities Metal Trades Council, herein called the Council, is and at all times herein alleged, has been a labor organization composed of a number of union locals chartered by international labor organizations affiliated with the American Federation of Labor and is a labor organization within the meaning of Section 2, subdivision (5), of the National Labor Relations Act.

East Bay Union of Machinists, Local 1304, chartered by United Steelworkers of America, is affiliated with the Congress of Industrial Organizations and is a labor organization within the meaning of Section 2, subdivision (5), of the National Labor Relations Act.

IV.

In order to insure to the employees of respondents the full benefit of their right to self organization and otherwise to effectuate the policies of the Act, the following described group of employees constitutes a unit appropriate for the purposes of collective bargaining with respondents in respect to rates of pay, wages, hours of employment, or other conditions of employment:

(1) All machinists in the Oakland Yard of respondents specifically including machinist helpers, machinist specialists, machinist apprentices, and machinist trainees but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

V.

On or about January 5, 1945, and at all times thereafter, a majority and in fact all of the employees in said unit had designated the Union as their representative for purposes of collective bargaining with respondents and on that date and at all times since the Union has by virtue of Section 9 (a) of the National Labor Relations Act been the exclusive representative of all employees in such unit for the purposes of collective bargaining with respondents in respect to rates of pay, wages, hours of employment, or other conditions of employment.

VI.

On or about January 5 and 6, 1945, and on various dates thereafter the Union, as the exclusive representative of all employees in the unit described in Paragraph IV, above, requested respondents to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment. On said dates, and at all times thereafter, and particularly on or about January 13, 1945, respondents refused, and still refuse to bargain collectively with the Union as such representative.

VII.

On or about January 13, 1945, respondents by their officers, agents, and employees signed a collective bargaining agreement with the Council which respondents and the Council claimed and still claim covers all production and maintenance employees of respondents including machinist employees in the unit described in paragraph IV, above, and

which requires membership in unions affiliated with the Council as a condition of employment for all employees covered thereby. At the time of signature of said contract, none of the employees in the unit described in paragraph IV, above, had designated the Council as his representative for the purposes of collective bargaining. Furthermore, at the time of signature of said contract, the Council was not the designated bargaining representative of a majority of respondents' employees in the unit covered by the agreement.

VIII.

By reason of all the matters alleged in paragraphs IV, V, VI, VII, the contract referred to in paragraph VII is unlawful and void insofar as it covers or purports to cover employees in the unit described in paragraph IV hereof.

IX.

On, or about January 25 and 26, 1945, respondents urged, persuaded, and warned all its employees in the unit described in paragraph IV, above, named in Appendix A attached hereto to become and remain members of a labor organization affiliated with the Council, which organization was not the representative of said employees within the meaning of Section 9 (a) of the Act, and it threatened said employees with loss of employment if they refused or failed to become and remain members of said labor organization. Respondents further informed both its machinist-employees described in paragraph IV, above, and representatives of the Union that

from and after January 26, 1945, only members of unions affiliated with the Council would be employed by respondents in the unit described in paragraph IV, above, and all Union members were to be and would be replaced by members of unions affiliated with the Council. On January 25 and 26, 1945, respondents replaced all employees in the unit described in paragraph IV, above, with members of unions affiliated with the Council (thereby terminating the employment of all) employees within the unit described in paragraph IV, solely because of their membership in the Union.

X.

Because of, and as a result of the unfair labor practices of the respondents described in paragraph VI, VII, and IX, above, the employees in the unit described in paragraph IV, engaged in a strike and all such employees ceased work on or about January 25, 1945. The said strike has continued from January 25, 1945, down to and including the date of issuance of this complaint and at the date hereof is now in progress and is a current labor dispute within the meaning of Section 2, subdivisions (3) and (9), of the Act and the participants therein are employees of the respondents within the meaning of Section 2, subdivision (3), of the Act.

XI.

On, or about February 14, and February 18, 1945, and on several occasions thereafter, the Union, acting on behalf of said employees who were on strike,

requested respondents to reinstate said striking employees to positions held by them before the strike. Respondents, on said dates, and at all times thereafter, refused to reinstate said striking employees or any of them to their former or substantially equivalent positions solely because of their membership in the Union and their participation in said strike.

XII.

By all of the acts of respondents, their officers, agents, and employees, as set forth in paragraphs VI, VII, IX, X, and XI, above, and by each of said acts, the respondents have interfered with, coerced, and restrained their employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts, and by each of them, have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8, subdivision (1), of the Act.

XIII.

By all of the acts of respondents, their officers, agents, and employees, as set forth in paragraphs IX, X, XI, above, and by each of said acts, the respondents have discriminated and are discriminating in regard to the hire and tenure of employment of their employees and did thus discourage and are discouraging membership in the Union, and did thereby engage in, and are thereby engaging in, unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

XIV.

By all of the acts of respondents, their officers, agents, and employees, as set forth in paragraph VI and VII, above, the respondents refused on request to bargain with the designated bargaining representative of their employees in an appropriate unit, as described in paragraphs IV and V, above, and did thereby engage, and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (5) of the Act.

XV.

The activities of the respondents, their officers, agents, and employees, as set forth in paragraphs VI, VII, IX, X and XI, above, occurring in connection with the operations of the respondents as described in paragraphs I and II, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and with foreign countries, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XVI.

The aforesaid acts of the respondents, their officers, agents and employees, as set forth in paragraphs VI, VII, IX, X, XI, XII, XIII, XIV, and XV, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5), and Section 2, subdivisions (6) and (7), of the Act.

Wherefore the National Labor Relations Board,

on the 3rd day of March, 1945, issues its complaint against W. C. and Agnes B. Graham, respondents herein.

[Seal] /s/ JOSEPH E. WATSON,
Region Director, 20th Region.

APPENDIX A

Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley, Lloyd M. Lee.

BOARD'S EXHIBIT No. 1-C

NOTICE OF HEARING

Please Take Notice that on the 15th day of March, 1945, at 10 o'clock in the forenoon in Room 449, Post Office Building, 7th and Mission Streets, San Francisco, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor

Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twentieth Region on this 3rd day of March, 1945.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National
Labor Relations Board.

(Affidavit as to Service attached.)

BOARD'S EXHIBIT No. 2

[Title of Board and Cause.]

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that W. C. and Agnes B. Graham, d/b/a Graham Ship Repair Co., at 501 1st Street (Foot of Washington), Oakland, Calif., employing 125 workers in ship repair, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) and (5) of said Act, in that

on or about January 25, 1945, it, by its officers, agents, and employees signed a closed shop contract with the Bay Cities Metal Trades Council allegedly covering all its employees including machinist employees at its Oakland, California, yard at a time when all its machinist employees were members of and represented by East Bay Union of Machinists, C.I.O.

By signing said contract and by proceeding to enforce the provisions thereof, it, by its officers, agents and employees, discriminated in regard to hire and tenure of employment and terms and conditions of employment of its machinist employees, namely, Frank Schaffer, Jim Potter, Elga Ashcraft, Gustov Berness, Tom Wright, B. F. Clark, Jim H. Clark, Bill Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis Whatley, Lloyd M. Lee.

On or about January 25, 1945, and at all times thereafter, it, by its officers, agents and employees refused to bargain collectively with the authorized representatives of East Bay Union of Machinists, C.I.O., a labor organization chosen by a majority of its machinist employees at its Oakland, California, yard for collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

On or about January 25, 1945, the Company's machinist employees named above ceased work as a consequence of the Company's unfair labor practices.

By the acts set forth in the paragraphs above, by threats to lock out C.I.O. machinists, and by replacing C.I.O. machinist members with members of unions affiliated with Bay Cities Metal Trades Council, and by other acts and conduct, it, by its officers, agents and employees interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7, of the Act in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

This charge was filed by an individual who also filed an affidavit attesting that he is an employee of the employer concerned at the repair yard involved. I am satisfied that the charging individual is an employee as he represents.

/s/ JOSEPH E. WATSON,

Regional Director.

Subscribed and sworn to before me this 7th day of March, 1945, at San Francisco, California.

/s/ WALLACE E. ROYSTER,

Attorney, 20th Region.

(Exhibit No. 2 (a) Affidavits as to Service attached.)

BOARD'S EXHIBIT No. 4

United States of America

Before the National Labor Relations Board

Twentieth Region

Case No. 20-C-1304

In the Matter of—

W. C. and AGNES B. GRAHAM, doing business as GRAHAM SHIP REPAIR CO.,

and

EAST BAY UNION OF MACHINISTS,
LOCAL 1304, C.I.O.,

and

BAY CITIES METAL TRADES COUNCIL,
A. F. of L., Party to the Contract.

ANSWER TO COMPLAINT

Comes now Bay Cities Metal Trades Council, A. F. of L., party to the contract, and answering the complaint issued in the above-entitled matter, admits, denies and alleges:

I.

Answering Paragraph I of the said complaint, said Council is without knowledge with respect to the allegations in said paragraph contained.

II.

Answering Paragraph II of the said complaint,

said Council is without knowledge with respect to the allegations in said paragraph contained.

III.

Answering Paragraph III of the said complaint, said Council admits the allegations in said paragraph contained.

IV.

Answering Paragraph IV of the said complaint, said Council denies the allegations in said paragraph contained.

V.

Answering Paragraph V of the said complaint, said Council denies the allegations contained in said paragraph but admits that some undetermined number of employees of respondent had on or about January 5, 1945, and thereafter, designated the East Bay Union of Machinists, Local 1304, C.I.O., as their collective bargaining representative.

VI.

Answering Paragraph VI of the said complaint, said Council is without knowledge with respect to the allegations in said paragraph contained.

VII.

Answering Paragraph VII of the said complaint, said Council denies the allegations in said paragraph contained except that it admits that there is in effect and has been in effect at all times mentioned in the complaint a collective bargaining agreement between the said Council and respondent which covers all production and maintenance employees of respond-

ent, including machinists, machinists helpers, machinists specialists, machinists apprentices and machinists trainees, and that the said agreement requires membership in unions affiliated with the Council as a condition of employment for all employees covered thereby.

VIII.

Answering Paragraph VIII of the said complaint, said Council denies the allegations in said paragraph contained.

IX.

Answering Paragraph IX of the said complaint, said Council is without knowledge with respect to the allegations in said paragraph contained and in connection with the allegations of said paragraph said Council alleges that at all times mentioned in complaint herein, said Council has been and still is the representative of all production employees of respondent, including those in the machinists category set forth in Paragraph IV of the said complaint within the meaning of Section 9-a of the Act.

X.

Answering Paragraph X of the said complaint, said Council denies the allegations contained in said paragraph but admits that certain employees of respondent did strike on or about the 25th day of January, 1945.

XI.

Answering Paragraph XI of said complaint, said Council is without knowledge with respect to the allegations in said paragraph contained.

XII.

Answering Paragraphs XII, XIII, XIV, XV, and XVI of the said complaint, said Council denies the allegations in said paragraphs contained.

/s/ CHARLES J. JANIGIAN,

Attorney for Bay Cities Metal Trades Council,
A. F. of L., Party to the Contract.

State of California,
City and County of San Francisco—ss.

Thomas A. Rotell, being first duly sworn, deposes and says:

That he is the assistant secretary of the Bay Cities Metal Trades Council, A. F. of L., party to contract; that he is making this verification for and on behalf of said Council; that he has read the foregoing Answer to Complaint and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

/s/ THOMAS A. ROTELL.

Subscribed and sworn to before me this 16th day of March, 1945.

/s/ JOHN PAUL JENNING,

Regional Attorney, N.L.R.B.,
28th Region.

[Title of Board and Cause.]

EXCEPTIONS OF BAY CITIES METAL
TRADES COUNCIL TO INTERMEDIATE
REPORT OF TRIAL EXAMINER

The Bay Cities Metal Trades Council, hereinafter referred to as the Council, party to the contract above named, hereby files the following exceptions to the intermediate report of the trial examiner filed in the above-entitled proceedings, as follows, to-wit:

I.

The Council excepts to the ruling of the trial examiner herein denying the motion made by its counsel at the conclusion of the hearings held in the above-entitled matter to dismiss the complaint issued in the above proceedings upon the grounds stated at the time of the making of said motion.

II.

The Council excepts to the following findings and each of them contained in the said intermediate report of the said trial examiner on the ground that the said findings are unsupported by the evidence and that the said findings and each of them are contrary to law:

1. The finding appearing in lines 9 and 10 on page 4 of said intermediate report as follows:

“The Council, however, offered no evidence in support of its contention.”

2. Commencing with the words “In a matter” appearing in line 18 to and including the words

“East Bay shipyards involved” appearing in lines 34 and 35 on page 5 of said intermediate report.

3. The paragraph commencing with line 37, page 5, to the end of said paragraph at line 47, page 5, of said intermediate report.

4. The paragraph commencing with line 52, page 5, to the end of said paragraph at line 62, page 5.

5. Portion of said intermediate report commencing with the words “the respondent” appearing at line 21, page 6, to and including the words “industrial organization” appearing in line 27, page 6.

6. All of footnote #6 appearing on pages 6 and 7 of said intermediate report.

7. The following finding appearing in lines 9 and 10, page 7, of said intermediate report:

“On the latter date, Lehaney and Graham instructed Close to request Smith to prepare a contract covering the machinists.”

8. The paragraph commencing with line 27, page 7, to the end of said paragraph appearing in line 42, page 7.

9. Commencing with line 44, page 7, to the end of line 29, page 8.

10. Commencing with line 34, page 8, and ending at line 44, page 8.

11. The paragraph commencing at line 46, page 8, to the end of said paragraph appearing at line 52, page 8.

12. The finding appearing on page 9, lines 5 and 6, as follows:

“At the end of the day shift all the machinists belonging to the Union were discharged.”

13. The paragraph commencing with line 8, page 9, and ending at line 20, page 9.

14. The paragraph commencing with line 22, page 9, to the end of said paragraph appearing in line 28, page 9.

15. The paragraph commencing at line 32, page 9, to the end of said paragraph in line 37, page 9.

16. The portion of the intermediate report entitled “The Remedy,” commencing with line 41, page 9, and ending at line 19, page 10.

17. The portion of the intermediate report entitled “Conclusions of Law” commencing at page 10 except as to a finding that the East Bay Union of Machinists and the Bay Cities Metal Trades Council are labor organizations within the meaning of Section 2(5) of the Act.

18. The portion of said intermediate report entitled “Recommendations”, commencing at line 25, page 11, to the end of said intermediate report.

Dated: July 3, 1945.

/s/ CHARLES J. JANIGIAN,

Attorney for Bay Cities Metal Trades Council,
A. F. of L.

United States of America
Before the National Labor Relations Board

Case No. 20-C-1304

In the Matter of

W. C. and AGNES GRAHAM, doing business
as GRAHAM SHIP REPAIR CO.

and

EAST BAY UNION OF MACHINISTS,
LOCAL 1304, C. I. O.

and

BAY CITIES METAL TRADES COUNCIL,
A. F. of L., Party to the Contract.

DECISION AND ORDER

On June 8, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondents had engaged in and were engaging in certain unfair labor practices affecting commerce and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Council filed exceptions to the Intermediate Report and a supporting brief. Pursuant to notice served on all parties, the Board heard oral argument at Washington, D. C., on August 14, 1945.

The Council and the Union participated in the oral argument; the respondents did not appear.

The Board has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Council's exceptions and brief, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions noted below:

1. The Trial Examiner found (1) that on and after January 2, 1945, the Union represented a majority of the employees in an appropriate unit of machinists; (2) that the respondents did not intend to have the machinists covered by the closed-shop contract with the Council, dated January 2, 1945, and that the Council was aware of the respondents' position in that regard; and (3) that the closed-shop contract with the Council was not a valid defense to the respondents' refusal to bargain with the Union on behalf of the machinists on and after January 17, 1945, and to the respondents' discrimination in regard to the hire and tenure of employment of the machinists on January 25, 1945. We agree.

2. The Council asserts that the closed-shop contract with the respondents, dated January 2, 1945, was intended by the parties to cover all production and maintenance employees, including machinists. But even assuming, *arguendo*, the correctness of the Council's contention and possible error by the

Trial Examiner in resolving this issue, we find that, under the circumstances of this case, a unit of production and maintenance employees, including machinists, is inappropriate. It is conceded that the Council did not represent a majority of the machinists, if regarded as a separate unit.

At the time of the execution of the contract in question, and since at least 1936, the machinists employed in ship repair yards located in Alameda County, where the respondents' yard is situated, bargained separately and apart from other production and maintenance employees.¹ With the exception of one or two yards, all these ship repair yards operated, and now operate, under the Master Ship Repair Contract with the Council of April 1, 1940, covering production and maintenance employees, exclusive of machinists, and under separate contracts with the Union, covering machinists. The record further shows that collective bargaining at the respondents' yard, from the time of its establishment in 1942 until the respondents took possession in January, 1945, was conducted on a two-unit basis, with the Union representing the machinists and the Council representing crafts other than machinists. On January 1, 1945, there were outstanding at the yard two closed-shop contracts, one with the Union covering machinists and other with the Council incorporating the terms of the Master Ship Repair Agreement of April 1, 1940,

¹See Matter of Bethlehem-Alameda Ship Yards, Inc., 53 N. L. R. B. 999.

covering all other crafts.² When the respondents took possession of the yard pursuant to their lease, they contemplated, and in fact made, no change in the nature of the business conducted by their predecessors Judson and Johnson, which was ship repairing.³ Nor did the respondents contemplate, or effect, any substantial change in the personnel of the yard.⁴

²Under their lease, the respondents assumed no obligations to carry out the terms of these contracts.

³We find no merit in the Council's contention that the respondents' predecessors were engaged in the business of new ship construction as distinguished from ship repair work. Johnson, former general manager of Judson, testified that Judson was primarily engaged in "conversion" of the vessels that had been to sea for the use of the Navy, and this work was considered repair work, and that it was paid for at the repair rate. In its brief in support of the exceptions to the Intermediate Report, the Council admitted that Judson as well as Johnson operated the Yard under the Master Ship Repair Agreement with the Council of April 1, 1940, thus in effect conceding that Judson and Johnson were engaged in ship repair business. Upon the entire record, we find that Judson as well as Johnson was engaged in the ship repair business.

⁴The respondents took over a number of employees of Johnson including three machinists and put them on their pay roll on January 2 and 3. Either before January 1 or shortly thereafter the respondents entered into an agreement with the Navy pursuant to which their source of labor supply was limited mainly to the former employees of Judson. Immediately thereafter, the respondents began hiring men formerly employed by Judson.

Upon the entire record, and particularly in view of the history of collective bargaining on a two-unit basis, the fact that the respondents neither contemplated nor effected any substantial changes in the nature or personnel of the business conducted by their predecessors, and the fact that the machinists had not changed their affiliation and the respondents had no reason to believe that any change in affiliation had occurred or would soon occur, we find that a unit composed of all production and maintenance employees, including machinists, was, and is, inappropriate within the meaning of Section 9 of the Act.⁵ Whatever majority the Council may have had in such an over-all unit, it admittedly had none within a machinists' unit standing alone. Since the unit covered by the closed-shop contract, dated January 2, 1945, is inappropriate, the contract failed to satisfy the Proviso to Section 8 (3) of the Act and hence can serve as no defense to the respondents' refusal to bargain with the Union on behalf of machinists and to the respondents' discriminatory treatment of the machinists.

3. The Council also contends that the 14 machinists were not discharged, as the Trial Examiner found, but that they were given an opportunity to remain in the employ of the respondents upon con-

⁵See Matter of Howard B. Jones Co., 55 N. L. R. B. 1176; Matter of Dain Manufacturing Co., 52 N. L. R. B. 1034; cf. Matter of South Carolina Granite Co., 58 N. L. R. B. 1448; and Matter of Synerco Machine Co., Inc., 62 N. L. R. B., No. 126.

dition that they join the A. F. L. union. Since, as we have found, the closed-shop contract did not satisfy the Proviso to Section 8 (3) of the Act, the conditioning of further employment of the machinists upon their joining the A. F. L. union is as direct a violation of the Act as their outright discharge for being members of the Union. We find no merit in the Council's contention.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, W. C. and Agnes Graham, doing business as Graham Ship Repair Co., Oakland, California, and their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or in any other labor organization of their employees, by laying off, discharging or refusing to reinstate any of their employees, by refusing to employ any member of the said labor organization, by conditioning further employment upon membership in Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or by discriminating in any other manner in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) Recognizing Bay Cities Metal Trades Coun-

cil, affiliated with the American Federation of Labor, as the exclusive representative of the employees in the appropriate unit described in paragraph 2 (c) of this Order;

(c) Giving effect to their contract, dated January 2, 1945, with the Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or to any extension, renewal, revision, modification or supplement thereof or to any superseding contract which may now be in effect, insofar as it affects their employees in the appropriate unit described in paragraph 2 (c) of this Order;

(d) Refusing to bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees in the appropriate unit described in paragraph 2 (c) of this Order, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which

the Board finds will effectuate the policies of the Act:

(a) Offer to Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley, Lloyd M. Lee immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the employees named in paragraph 2 (a) of this Order for any loss of pay they may have suffered by reason of the respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondents' discrimination against him to the date of the respondents' offer of reinstatement, less his net earnings during such period;

(c) Upon request, bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the respondents' machinists, machinist helpers, machinist specialists, machinist apprentices, and machinist trainees, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(d) Post in their ship repair yard at Oakland, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondents' representative, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Region Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

Signed at Washington, D. C., this 12th day of September, 1945.

[Seal] PAUL M. HERZOG

Chairman

JOHN M. HOUSTON

Member

National Labor Relations
Board

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate

the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist East Bay Union of Machinists, Local 1304, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

We will bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All machinists of W. C. and Agnes Graham, doing business as Graham Ship Repair Co., including machinist helpers, machinist specialists, machinist apprentices, and machinist trainees but excluding all supervisory employees with authority to hire, promote, discharge, discipline, otherwise effect

changes in the status of employees or effectively recommend such action.

The employees to be offered reinstatement with back pay are: Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley, and Lloyd M. Lee.

We will not give effect to our contract, dated January 2, 1945, with the Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or to any extension, renewal, revision, modification or supplement thereof or to any superseding contract which may now be in effect, insofar as it affects our employees in the unit above described.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

W. C. and AGNES GRAHAM,
doing business as Graham
Ship Repair Co., (Em-
ployer)

Dated.....

By

(Representative)

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

Mr. Wallace E. Royster, for the Board.

Mr. Bernard B. Stimmel, of San Francisco, Calif., for the respondents.

Mr. J. H. Sapiro, of San Francisco, Calif., for the Union.

Mr. Charles J. Janigian, of San Francisco, Calif., for the Council.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a first amended charge duly filed on March 2, 1945, by East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued its complaint, dated March 3, 1945, against W. C. Graham and Agnes Graham, doing

business as Graham Ship Repair Co., herein called the respondents, alleging that the respondents, and each of them, had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the first amended charge, accompanied by notice of hearing thereon, were duly served upon the respondents and Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, herein called the Council, a party to the contract.

With respect to unfair labor practices, the complaint, as amended at the hearing, alleges in substance that the respondents (1) on or about Jan. 5, Jan. 6, and Jan. 13, 1945, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of their employees in a certain appropriate unit,¹ although a majority of the employees in the said unit had designated the Union as their representative for such purpose; (2) on or about January 13, 1945, entered into a

¹The unit alleged in the complaint to be appropriate comprises all the respondents' machinists, machinist helpers, machinist specialists, machinist apprentices and machinist trainees, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action. The persons in the machinist category are the only ones involved in this proceeding.

written collective bargaining contract with the Council, although at the time of the execution of said agreement the Council had not been designated the exclusive representative of the employees; (3) on or about January 25, 1945, urged, persuaded, and warned their employees to become members of the Council, and threatened their employees with discharge if they failed or refused to become and remain members of the Council; (4) on or about January 25, 1945, discharged 14 named employees² because they failed and refused to become members of the Council; and (5) by the foregoing acts, interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondents filed to answer. The answer filed by the Council avers, inter alia, that during all times material herein, the respondents and the Council have had a valid collective bargaining agreement covering all the employees of the respondents, including those in the unit alleged in the complaint to be appropriate.

Pursuant to notice, a hearing was held from March 15 to March 21, 1945, inclusive, at San Francisco, California, before the undersigned, Howard Myers, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent,

²Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley, and Floyd M. Lee.

the Union, and the Council were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. At the conclusion of the hearing, Board's counsel moved to conform the pleadings to the proof with respect to minor inaccuracies, typographical errors, misspelling, and the like. The motion was granted without objection. Counsel for the Council then moved to dismiss the complaint for lack of proof. Decision thereon was reserved. The motion is hereby denied. Oral argument, in which counsel for the respective parties participated, was heard at the conclusion of the taking of the evidence and is part of the record. The parties were granted leave to file briefs with the undersigned on or before April 4, 1945. A brief has been received from counsel for the Union.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

The respondents' ship repair yard is located at 501 First Street, Oakland, California, where they are engaged in repairing and reconverting combat, landing, and transport ships for the United States Navy and cargo and other vessels for the War Shipping Administration. During January and February, 1945, the respondents' gross income from their

ship repair business aggregated approximately \$200,000. About 15 or 20 per cent of the ships repaired and reconverted during those months came to the respondents' yard from points outside of the State of California. During the same period, the respondents' purchases amounted to approximately \$60,000; about 15 or 20 per cent thereof came from points outside the State of California. The respondents' estimated business for the current year will aggregate about \$2,500,000.

The respondents concede that the Board has jurisdiction in this matter.

II. THE ORGANIZATIONS INVOLVED

East Bay Union of Machinists, Local 1304, is a labor organization affiliated with the Congress of Industrial Organizations, and Bay Cities Metal Trades Council is a labor organization affiliated with the American Federation of Labor. Both organizations admit to membership employees of the respondents.

III. THE UNFAIR LABOR PRACTICES

A. Background

The property upon which the respondents' yard is located is owned by the Port Authority of the City of Oakland, California. In the Spring of 1943, Judson-Pacific War Industries, herein called Judson, leased the property and erected thereon a ship repair yard. In November, 1944, Judson sold its equipment to Walter W. Johnson Company, herein called Johnson. However, Johnson did not take

possession until December 19, because it was not until then that Judson finished the work it was doing on the ships in the yard. Sometime in the latter part of December, Johnson leased the equipment to the respondents who took possession and commenced business on January 2, 1945. From December 19 to January 2, Johnson had in its employ a superintendent, an assistant superintendent, three machinists, who, during this period, were engaged in maintenance work only, and several clerical employees. These persons were in the employ of Judson when Johnson took over the yard on December 19. When the respondents commenced work on January 2, they had eight employees, including the three machinists formerly in the employ of both Judson and Johnson. With increased business the number of employees increased. The following table sets forth the approximate number of employees during the first 4 weeks of operations:

Week ending Jan. 7: Approximately 50 employees, including 3 machinists.

Week ending Jan. 14: Approximately 153 employees, including 3 machinists.

Week ending Jan. 21: Approximately 182 employees, including 4 machinists.³

Week ending Jan. 28: Approximately 329 employees.⁴

³On January 20, there were four machinists in the respondents' employ.

⁴The record does not show how many machinists were in the respondents' employ subsequent to January 25. On that day, however, there were 18 machinists employed.

B. Interference, Restraint and Coercion; the Refusal to Bargain Collectively

(1) The Appropriate Unit

The complaint alleges that during all times material herein, machinists in the employ of the respondents, including machinist helpers, machinist specialists, machinist apprentices, and machinist trainees, but excluding supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constituted, and now constitute, a unit appropriate for the purposes of collective bargaining. The answer of the Council denies, in effect, the appropriateness of the alleged unit. At the hearing, the respondents, in effect, took the position that those employed in the machinist category constituted an appropriate unit. This is the unit alleged in the complaint as being appropriate and is the unit which the Union contends is appropriate. On the other hand, the Council contended that all the non-supervisory production and maintenance employees of the respondents constituted an appropriate unit. The Council, however, offered no evidence in support of its contention. Admittedly, the persons in the machinist category comprise generally a highly skilled group of workers. The record discloses that they are identified with a functionally distinct and long established craft. The history of collective bargaining in the shipbuilding industry in the area where the respondents' yard is located lends great weight to

the Board's contention that the persons employed by the respondents in its machinist category constitute a unit separate and apart from the other production and maintenance employees of the respondents. In a matter in which the Union and the Council were parties, the Board had before it this precise question regarding the appropriateness of a unit composed of machinists.⁵ In that case, in reviewing the history of collective bargaining in the area in which the respondents' yard is located, the Board said:

The record in this case discloses that, except for machinists, whose position has been unique, the process of collective bargaining in the San Francisco Bay area shipbuilding industry has proceeded, at least since 1936, on the basis of plant-wide units. In February, 1936, following a strike in the shipyards in this area, a group of American Federation of Labor Unions, acting jointly, entered into a collective bargaining agreement with all the major San Francisco Bay shipyards other than the Bethlehem yards. The agreement, while specifically covering the various occupational classifications in these yards, welders among them, made no reference to machinists. Thereafter beginning in February, 1937, the American Federation of Labor unions, acting now through the Council which signed on their behalf, entered into further and similar agreements with the same shipyard operators, and these con-

⁵In the Matter of Bethlehem-Alameda Shipyard, Inc., et al., 52 N.L.R.B. 999.

tinued in effect until April, 1941. All of these agreements likewise expressly included welding and burning among the covered classifications, but did not purport to cover machinists. Although the Bethlehem yards were not parties to these agreements, there is evidence indicating that the terms of these agreements were informally recognized and observed by them.

In April, 1941, as the result of a conference held under the auspices of the Shipbuilding Stabilization Committee, an agreement, known as the Pacific Coast Shipbuilding Master Agreement, was reached between representatives of the Pacific Coast shipbuilding industry and the Metal Trades Department of the American Federation of Labor to which the Council is affiliated. With the exception of the two Bethlehem companies herein involved, all shipyards in the San Francisco Bay Area are now covered by this Master Agreement. Among those covered is the Bethlehem San Francisco yard, operated under the same management as the Companies herein involved, which on June 28, 1941, after a cross-check conducted by the Regional Director in a stipulated production and maintenance unit, entered with the Council into a contract containing, except for some minor modifications, terms identical to that of the Master Agreement. The Master Agreement explicitly includes welders among the covered classifications.

Although machinists are also covered in the Master Agreement, that agreement in its application to

shipbuilding concerns in the East Bay area shipyards has been construed to exclude employees in this classification from the Council's unit.

Reference has been made to the unique position occupied by machinists in the collective bargaining pattern of the San Francisco Bay Area shipbuilding industry. It has been noted that in the period prior to April 23, 1941, whenever the Council executed agreements with shipyards in this area, machinists were excluded from their scope. During this same period, the Machinists, which claims jurisdiction over machinists in the East Bay Area, and Local 68 of the International Association of Machinists, which claims jurisdiction on the west side of the Bay in the San Francisco area, conducted their own negotiations and entered into contracts independently of the Council. It appears that although the Repair Yard refused to sign any of the contracts which were periodically negotiated by the Machinists with other East Bay shipyards, on the occasion of each such contract a tacit understanding was reached between the Machinists and the foreman of the Repair Yard's machine shop pursuant to which the latter agreed to abide by the terms of the contracts at least with respect to its wage rates. As a consequence of the Master Agreement, a dispute arose between the Council, the Machinists, and East Bay shipyards over the Council's demand that the shipyards hire only AFL machinists. The dispute was ultimately submitted to the then codirector of the Office of Production Management, who ruled that the Council agreement did not cover machinists

in the East Bay Area and that the Machinists were separately entitled to the benefits of the Master Agreement in that area. About a year later, when the same dispute arose anew and a work stoppage was threatened, the matter was referred to the National War Labor Board which has since upheld the Machinists' claim to have machinists cleared through it in the East Bay shipyards involved.

The undersigned finds that the respondents' employees receive the full benefit of the right to self-organization by having a separate and distinct unit composed of persons employed in the machinist category. Therefore, the undersigned finds that all the respondents' machinists, machinist helpers, machinist specialists, machinist apprentices and machinist trainees but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, at all times material herein constitute and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of a Majority in in the Appropriate Unit

At the hearing, the parties stipulated, and the evidence clearly establishes, that from January 2, 1945, the day when the respondents commenced work in the yard, all the respondents' machinists were members in good standing of the Union. The undersigned accordingly finds that on January 2, 1945,

and at all times thereafter, the Union was the duly designated bargaining representative of a majority of the respondents' employees in the unit heretofore found appropriate. Pursuant to Section 9 (a) of the Act, the Union was, therefore, the exclusive representative of all the respondents' employees in such unit for the purposes of collective bargaining in respect to rates of pay, hours of employment and other conditions of employment.

3. The Refusal to Bargain

In the latter part of December, 1944, the respondents employed Raymond H. Lehaney as their labor relations director. Lehaney at that time was, and still is, the public relations director for the Western Congress of the Teamsters Union, an affiliate of the American Federation of Labor. Not being familiar with the labor situation in the San Francisco area, Lehaney called on several officials of the Teamsters Union for assistance and advice. They told Lehaney that all the shipyards in the San Francisco area were under closed-shop contracts with the American Federation of Labor. On January 2, Lehaney and W. C. Graham, one of the respondents and the active head of the business, called upon an official of the Council. There, according to the testimony of Graham, he and Lehaney discussed a collective bargaining agreement with some of the officials of the Council, but no agreement was signed that day. Lehaney and several Council officials testified that a closed-shop agreement was signed by Lehaney that day, but not while Graham was pres-

ent. The record discloses no other meeting between Lehaney and the Council that day. The date when the agreement was actually signed is of no great importance to the issues involved herein for the respondents agreed at the January 2 meeting to enter into a closed-shop agreement with the Council.⁶ The respondents, however, maintain that it was understood at that meeting that the closed-shop contract was not to cover the machinists for, as the evidence discloses, the parties were well aware of the situation in the area in which the respondents' yard is located with respect to machinists; namely, that all the unionized machinists in that area are members of the Congress of Industrial Organizations.

⁶The contract, dated January 2, 1945, lists the names of the various crafts for whom the Council was entering into the contract and the categories of the persons over whom the named crafts have jurisdiction. The machinists are not mentioned by name therein. What Lehaney signed on that day is the following:

Acceptance of Agreement

It Is Mutually Agreed To by and between the Employer signatory hereto, engaged in Ship Repair work in San Francisco Bay Area and the Bay Cities Metal Trades Council of the American Federation of Labor and its affiliated unions, that the 1940 Bay Cities Metal Trades Council Ship Repair Agreement as amended shall remain in force and effect in accordance with the terms contained herein.

The agreement referred to in the above memorandum is a master agreement, dated April 1, 1940, between the Council and various San Francisco area ship repair companies. This master agreement was amended in 1944. The master agreement and the amended agreement list the names of the crafts for whom the Council was contracting and the cate-

On or about January 5, James P. Smith, the Union's business agent, met with Lehaney and James W. Close, the respondents' general superintendent and general manager, and informed them that all the machinists employed by the respondents were members of the Union and demanded that Lehaney sign an agreement covering these men or continue in effect the contract which the Union had with Judson.⁷ Lehaney replied that he would have to consult with his superiors. Several other demands for a collective bargaining contract covering ma-

gories of the persons over whom the named crafts have jurisdiction. The machinist group is not mentioned in either agreement. The Council argues that a master agreement, dated April 23, 1941, between the Pacific Coast Shipbuilders and Metal Trades Department of The American Federation of Labor, The Council, and various other American Federation of Labor affiliates, including the International Association of Machinists, superseded the 1940 contract and is the contract which is now controlling upon the parties and therefore the parties to the closed-shop agreement in controversy herein are bound by its terms. This contract is between various labor organizations affiliated with American Federation of Labor and various Pacific Coast companies engaged in building new ships. The respondents are not so engaged. Their business is repairing and converting ships. The Council's contention that the respondents are bound by the 1941 ship-building contract is without merit. Moreover, the ship repair contract is confined to the San Francisco area while the new ship contract of 1941 covers the entire Pacific Coast. See *In the Matter of Bethlehem-Alameda Shipyard, Inc. et al.*, 53 N.L.R.B. 999.

⁷Judson was operating under a closed-shop contract with the Union with respect to machinists.

chinists were made by Smith between January 5 and 15. On the latter date, Lehaney and Graham instructed Close to request Smith to prepare a contract covering the machinists.⁸ Close so informed Smith, who replied that he would submit a contract. On January 17, Smith met with Graham, Lehaney and others at which meeting he submitted a contract. Graham and Lehaney refused to examine it or to sign it, stating that they could not enter into an agreement with Smith because of the existing closed-shop agreement with the Council. On several occasions between January 17 and 25, Graham and Lehaney conferred with the Council. These meetings were held solely for the purpose of straightening out the differences that arose between the respondents and the Council with respect to the machinists in the respondents' employ. The respondents maintained at these meetings that the agreement of January 2 did not cover the machinists but the Council maintained that it did. Finally, on January 25, the Council informed the respondents that if they did not replace the Union's machinists with machinists belonging to the Council, it, to quote Close's version of what Lehaney said to him, "would pull the rest of the crafts out of the yard." On January 25, the respondents replaced its machinists with machinists belonging to the Council.

It is clear that the respondents did not intend the agreement with the Council to cover the ma-

⁸According to Close's testimony, Lehaney's instructions were to inform Smith to present a predated contract.

chinists, for the record discloses that Graham sometime after January 2 instructed Lehaney to enter into an agreement with the Council for all the production and maintenance employees except the machinists and instructed Close to enter into an agreement with the Union for the machinists. Lehaney knew that Close was so instructed because Graham wanted Lehaney to handle the contract with the Union and the latter begged off, saying that he could not very well enter into negotiations with the Union because of his official position with the Teamsters Union. Furthermore, the Council was well aware on January 2, that the respondents did not intend the contract between them to cover the machinists. The respondents' position in this regard is clearly set forth in the following colloquy which ensued between counsel for the respondents and the undersigned during oral argument at the conclusion of the taking of evidence herein:

Mr. Stimmel: That Mr. Lehaney received no authority to sign a contract, I think the evidence will show that until around January 6th, at which time he received a limited authority to sign an A.F.L. contract and that Mr. Close was to sign the C.I.O. contract. That the contract which Mr. Lehaney signed, if he did sign it, and he did, exceeded his authority in regard to the C.I.O. machinists.

Trial Examiner Myers: Is it your contention that the contract with the A. F. of L. Council did not cover the machinists at the respondent's operation?

Mr. Stimmel: That the contract which Lehaney

was authorized to sign was the same type of contract that was in the other yards in the East Bay district and that he was instructed specifically at that time that Mr. Close was the authorized agent to sign the C.I.O. contract and that circumstance was brought out in the evidence by the testimony of Mr. Lehaney himself who stated that when he was told to sign a contract with the A.F.L. and the C.I.O., he demurred to it, stated he could not sign a C.I.O. contract because he was a high official of the A. F. of L. and that he suggested Close sign such a contract.

Trial Examiner Myers: But my question is, and I am just thinking out loud when I am discussing this, I have not come to any conclusion whatsoever, as to the facts in the case—is it your contention that the agreement with the Council does not cover machinists?

Mr. Stimmel: Yes. . . .

4. Concluding Findings as to the Refusal to Bargain

When the respondents informed Smith on January 17, that they could not enter into an agreement with the Union because of the then existing agreement with the Council, this reason was but a pretext. As between incurring the consequences of disregarding the obligations to bargain with the Union as imposed by the Act and the economic results that were implicit in the threat of the Council, the respondents have elected to avoid the latter and risk the former. They were forced to make a

choice and they took the course that is prohibited by the Act. There is no alternative but to order them to reverse their position and comply with the law.⁹ Mere threats of economic hardships do not clothe an employer with immunity to violate the Act.¹⁰

The undersigned finds that on January 17, 1945, and at all times thereafter, the respondents, and each of them, refused to bargain collectively with the Union as the exclusive representative of their employees in an appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and by such refusal interfered with, restrained and coerced their respective employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The Discriminatory Discharges

About 11 o'clock on January 25, Lehaney told Close "to get the C.I.O. machinists out of the yard by 11:30, if not—the Bay Cities Metal Trades would pull the rest of the crafts out of the yard." Close, however, did not immediately discharge the machinists, but waited until late in the afternoon to inform them, as he testified, "that the A.F.L. had a contract in the yard and we were [going] to use A.F.L. machinists from that time on." At the end

⁹See *Matter of National Broadcasting Company, et al.*, 61 N.L.R.B., No. 21; *N.L.R.B. v. Star Publishing Co.*, 97 F (2d) 465 (C.C.A. 9).

¹⁰*Matter of John Engelhorn*, 42 N.L.R.B. 866, enf'd 134 F (2d) 553 (C.C.A. 3).

of the day shift all the machinists belonging to the Union were discharged.¹¹

The respondents and the Council have taken the position that Congress having validated closed-shop agreements in the proviso of Section 8 (3),¹² and such a sanctioned contract being the basis of the action here complained of, the respondents cannot be charged with an unfair labor practice when they discharged the 14 Union machinists then in their employ. These contentions are without merit. For, as found above, the contract in question is inoperative insofar as the machinists are concerned for the machinists belong to a separate and distinct

¹¹The complain alleges that 14 men were discharged on January 25. Of these 14, 11 were working in the yard that day. The remaining 3, Wall, Whatley and Lee, were hired on January 25, but were not to commence work until January 26. After Close had announced that no Union machinists would be employed, these 3 were informed of this announcement and they did not report on January 26.

¹²The proviso reads as follows: "Provided, That nothing in this Act, or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

unit. The contract did not cover the machinists. The record is clear that the respondents, when they discharged the Union's machinists, did not do so because they believed that they were enforcing the terms of the contract, but rather on account of the Council's threat to "pull the yard" if they refused to discharge the Union's machinists and replace them by the Council's machinists.

Upon the entire record, the undersigned finds that the respondents discharged the 14 named machinists on January 25, 1945, because of their membership and activities in the Union, thereby discouraging membership in the Union and encouraging membership in the Council and interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents set forth in Section III, above, occurring in connection with the operations of the respondents described in Section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondents have engaged in unfair labor practices, the undersigned will rec-

commend that the respondents, and each of them, cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondents have refused to bargain collectively with the Union. The undersigned will accordingly recommend that the respondents, upon request, bargain collectively with the Union as the exclusive representative of the respondents' employees in the appropriate unit in respect to rates of pay, wages, hours of employment and other conditions of employment.

Having found that the respondents discharged 14 named employees¹³ on January 25, 1945, and thereafter refused to reinstate them for the reason that they, and each of them, joined and assisted a labor organization and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection, it will be recommended that the respondents offer them immediate and full reinstatement to their former or substantially equivalent positions.

It will be further recommended that the respondents make the said 14 named employees whole for any loss of pay they may have suffered by reason of the discrimination by payment to each of them of a sum equal to the amount he would normally have earned as wages from the date of the discharge

¹³See footnote 2.

to the date of the offer of reinstatement, less his net earnings¹⁴ during such period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW

1. East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, and Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the 14 named employees,¹⁵ thereby discouraging membership in East Bay Union of Machinists, Local 1304, affiliated with the

¹⁴By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v N.L.R.B., 311 U.S. 7.

¹⁵See footnote 2.

Congress of Industrial Organizations, and encouraging membership in Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, the respondents, and each of them, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. All of the respondents' machinists, machinist helpers, machinist specialists, machinist apprentices and machinist trainees, but excluding all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, was on January 2, 1945, and at all times thereafter has been, and now is the exclusive representative of the respondents' employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. By refusing on January 17, 1945, and at all times thereafter, to bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees in the appropriate unit, the respondents, and each of them, have engaged in and are engaging in unfair labor

practices, within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act the respondents, and each of them, have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondents, and each of them, their agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or any other labor organization of their employees by laying off, discharging, or refusing to reinstate any of their employees and from refusing to employ any member of the Union herein, or in any other manner discriminating in regard to the hire and tenure of employment or any term or condition of employment;

(b) Recognizing Bay Cities Metal Trades Council, affiliated with the American Federation of

Labor, as the exclusive representative of their employees in the aforesaid appropriate unit for the purposes of collective bargaining;

(c) Discharging any employee in the unit hereinbefore found appropriate in reliance on their contract of January 2, 1945, with the Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or any revisions thereof or any extension, renewal, revision, modification or supplement thereof or any superseding contracts which may now be in effect;

(d) Refusing to bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees in the unit hereinbefore found appropriate, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which

the undersigned finds will effectuate the policies of the Act.

(a) The respondents, and each of them, shall offer to the 14 named employees¹⁶ immediately and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(b) The respondents, and each of them, shall make whole each of the said 14 named employees for any loss of pay he may have suffered by reason of the respondents' discrimination in regard to his hire and tenure of employment, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of the discrimination against him to the date of the respondents' offer of reinstatement, less his net earnings during such period;

(c) The respondents, and each of them, shall, upon request, bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the respondents' machinists, machinist helpers, machinist specialists, machinist apprentices, and machinist trainees, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, in respect to

¹⁶See footnote 2.

rates of pay, wages, hours of employment and other conditions of employment;

(d) The respondents shall post in their ship repair yard at Oakland, California, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondents' representative, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Twentieth Region, in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July

12, 1944, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

/s/ HOWARD MYERS,
Trial Examiner.

Dated: June 8, 1945.

APPENDIX A

NLRB 583 (9-1-44)

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board,

and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist East Bay Union of Machinists, Local 1304, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

We will bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All machinists of W. C. and Agnes Graham, doing business as Graham Ship Repair Co., including machinist helpers, machinist specialists,

machinist apprentices, and machinist trainees but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

The employees to be offered reinstatement with back-pay are: Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley, and Lloyd M. Lee.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

W. C. and AGNES GRAHAM,
Doing Business as Graham
Ship Repair Co.
(Employer)

Dated:

By

(Representative) (Title)

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

PETITION FOR REHEARING

Comes now Bay Cities Metal Trades Council, A. F. of L., party to contract, and petitions for rehearing in the above-entitled case and for grounds therefor alleges:

1. That the evidence does not support the decision and order in this case and that the said decision and order are, and each of them is, contrary to law.

We submit that the Board should grant a rehearing in this case in order to avoid a very gross miscarriage of justice. The trial examiner and the Board predicate their finding that the respondent's contract with the Bay Cities Metal Trades Council does not cover machinists upon the principal ground that the contract was intended to cover only production employees other than machinists.

We submit that an impartial examination of the evidence clearly negatives any such conclusion. Graham testified that he had authorized Ray Lehaney, his labor relations representative, to negotiate a contract. In this connection Graham testified as follows:

“Q. Did you instruct Mr. Lehaney as to his

authority to sign a collective bargaining agreement? A. I did.

Q. What instructions did you give him in that respect?

A. I authorized him to negotiate and sign a contract.

Trial Examiner: With whom?

A. With such unions as in his opinion was the appropriate ones." (Tr. p. 57)

At the time the contract was negotiated on January 2, 1945, there was no question as to what the Council intended as to its coverage. Mr. Thomas A. Rotell, Assistant Secretary of the Council, told Mr. Graham in very clear and concise language that all of his workers were required to be affiliated with the A. F. of L. (Tr. p. 52) Despite statements by respondent's counsel in the hearing which was improperly given credence by the trial examiner, the fact remains that respondent Graham admitted giving Mr. Lehaney authority to sign a collective bargaining agreement "with such unions as in his opinion, was the appropriate ones."

Ray Lehaney testified that Graham gave him full authority to sign a collective bargaining agreement (Tr. p. 294.) Although Graham claims that he did not know that Lehaney had signed an agreement until several days later, Lehaney testified that Graham did know that he signed an agreement on January 2, 1945, because Lehaney so informed him. The evidence, we believe, is conclusive on the fact that the agreement was intended to cover all of

respondent's production employees, including the machinists.

The Board finds that because there had been negotiations on the basis of a separate machinists unit, that unit must necessarily be an appropriate one. We submit that such a finding could only be justified on the theory that Graham was a successor to Walter Johnson and Judson Pacific War Industries. The evidence cannot justify any such finding. Not only is the evidence barren of any suggestion that Graham assumed any labor agreements that the respondent had with either the Bay Cities Metal Trades Council or the East Bay Union of Machinists, but the evidence shows that Graham did not know at the time he took possession of the yard whether or not the employees of his predecessor were in fact represented by a labor organization (Tr. p. 47).

The decision and order should be set aside and a rehearing granted upon the further ground that the Board's order requiring the employer to recognize Local 1304 as the collective bargaining representative of the employees is without support in the evidence and is contrary to law. This order is based upon a finding by the trial examiner that on January 17, 1945, respondent refused to bargain collectively with Local 1304. The evidence indicates quite clearly that respondent would have been in violation of the Act if he had recognized Local 1304 as the exclusive representative of his machinist employees and bargained with it on that

day. The record shows, and the trial examiner so finds, that on January 14, 1945, there were but three machinists in the employ of respondent and on January 21st only four. On January 25th when the C.I.O. machinist employees terminated their employment on instruction from their business agent, Smith, there were only eleven machinists actually employed. The evidence likewise shows that at the time of the hearing there were twenty-six machinists employed out of a total personnel of 289.

The evidence indicates that respondent commenced his ship repair operations on January 2, 1945, at which time he employed three machinists. The respondent contemplated employing a much larger number of employees, including machinists. His first ceiling was set at 250 and this ceiling was later increased so that at the time the case was argued before the Board, there were approximately 900 employees, including 108 machinists. It may not be denied that in view of these circumstances that the bargaining unit of machinists was a continuously expanding one.

The Board, in the Solar Aircraft case and other cases has consistently held that no exclusive recognition may be accorded to a union representing such an expanding unit and that an employer may not enter into a collective bargaining agreement with a union representing a majority of the employees in such an expanding unit until the unit represents 50% or more of a normal complement

or the number which an employer contemplates hiring.

It is very apparent from all the evidence in this case that the employer intended to, and did hire a great deal more than three machinists. In view of the Board's many decisions in which it has consistently adhered to its expanding unit theory, we are at a loss to understand how the Board may consistently issue an order commanding the employer to bargain with a union which represented three and certainly not more than eleven out of a unit which has grown from three to 108. The Council is entitled to receive the same consideration from the Board as other unions appearing before it. Unless the Board is prepared to state that it has abandoned the expanding unit theory, then we submit that it should apply it in this case and delete from its order all provisions in its order requiring the employer to bargain collectively with Local 1304. In its present form the order of the Board is violative of the principles repeatedly enunciated by the Board and is discriminatory and unjust.

On January 17, 1945, the date on which the Board found the company violated the Act in refusing to bargain with Local 1304, there were, as we have stated, but three machinists employed.

None of the machinists employed by respondent since January 25th are members of Local 1304. In fact, the evidence shows without contradiction that the machinists are members of the International Association of Machinists, A. F. of L.

We submit that the Board should attempt to administer the Act impartially and in so doing should set aside its decision and order at least to the extent of not requiring the employer to recognize Local 1304 as the exclusive collective bargaining representative of the machinists.

Under the circumstances of this case, the least that the Council and its affiliated unions may expect from the Board is that an election may be ordered among the machinists employed by respondent.

Respectfully submitted,
/s/ CHARLES J. JANIGIAN,
Attorney for Bay Cities Metal Trades Council,
A. F. of L.

September 21, 1945.

[Title of Board and Cause.]

ORDER DENYING PETITION FOR
REHEARING

On September 12, 1945, the Board issued its Decision and Order¹ in the above-entitled matter, finding, among other things, that the closed-shop contract of January 2, 1945, between the Council and the respondents was not a valid defense to the respondents' refusal to bargain with the Union on behalf of the machinists, because the contract did

¹63 N. L. R. B., No. 130.

not cover machinists and, even assuming arguendo that it did, a unit of production and maintenance employees, including machinists, is inappropriate in the circumstances of this case. On September 21, 1945, the Council filed with the Board a petition for rehearing on the following grounds:

1. The Council alleges that the record does not support the Board's finding that the closed-shop contract of January 2, 1945, was not intended to cover machinists. We find no merit in this contention. For the reasons set forth in the Intermediate Report attached to our Decision and Order, we reaffirm our finding in this respect.

2. The Council contends that the Board's finding that a unit of machinists is the only appropriate unit in the circumstances of this case, is predicated on the history of collective bargaining on a two-unit basis. It then attacks this finding on the ground that (a) such a finding can only be supported on the theory that the respondents are successors to Johnson Company and Judson-Pacific War Industries, which had bargained with the Union on the basis of a separate machinists' unit, and (b) the record does not support a finding of successorship because the respondents did not assume any labor agreements of their predecessors and were unaware of the fact that the employees of their predecessors were represented by a labor organization. We find no merit in these contentions. Moreover, the respondents' failure to assume any collective bargaining agreements of their

predecessors and their lack of knowledge concerning the representation of the employees of their predecessors are immaterial to our finding of the appropriate unit. Finally, as found in our Decision of September 12, 1945, the respondents took possession of the shipyard under the lease from the Johnson Company and continued their predecessors' established business of ship repairing without substantial changes in the personnel of the yard or in the nature of the business. A mere change in the identity of the employer does not rebut the presumption of the continued appropriateness of bargaining on a two-unit basis.

3. The Council finally contends that the respondents' refusal to bargain with the Union on behalf of the machinists was not violative of the Act because the machinists' unit was an "expanding unit" which at that time included only a small number of the total machinists contemplated to be employed by the respondents. This contention is raised by the Council for the first time and is inconsistent with its position in its brief before the Board. We are convinced that at the time of the respondents' refusal to bargain with the Union the machinists' unit was not an "expanding unit" as that term has been used by the Board in representation proceedings. But assuming arguendo the correctness of the Council's characterization of the machinists as an "expanding unit," the Board's procedure in representation proceedings is not inconsistent with its finding that the respondents' refusal to bargain with the Union violated the Act. It is the

Board's established practice to facilitate immediate collective bargaining. Accordingly, the Board has always directed an immediate election to determine the collective bargaining representative where the anticipated expansion in the personnel within the appropriate unit is neither measurable nor definite nor imminent, but is merely speculative.² In the instant case, the record shows that expansion in the respondents' business, the anticipated total number of machinists to be employed, and the date when full employment would be attained were neither measurable, imminent, nor certain in view of the insufficiency of the labor supply. We find no merit in the Council's contention.

It Is Hereby Ordered that the Council's Petition for Rehearing be, and it hereby is, denied.

Signed at Washington, D. C., this 23 day of October, 1945.

[Seal]

PAUL M. HERZOG,

Chairman.

JOHN M. HOUSTON,

Member, National Labor Relations Board.

²See, for example, Matter of Somerset Shipyards, Inc., 48 N. L. R. B. 430; Matter of Aluminum Company of America, Meade Aluminum Plant, 49 N. L. R. B. 1431.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11267

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

W. C. and AGNES GRAHAM, doing business as
GRAHAM SHIP REPAIR CO.,
Respondents.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C., § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondents, W. C. and Agnes Graham, doing business as Graham Ship Repair Co., Oakland, California, and their agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of W. C. and Agnes Graham, doing business as Graham Ship Repair Co. and East Bay Union of Machinists, Local 1304, C. I. O. and Bay Cities Metal Trades Council, A. F. of L., Party to the Contract, Case No. 20-C-1304."

In support of this petition, the Board respectfully shows:

(1) Respondents are engaged in business in the State of California within this judicial circuit. This Court, therefore, has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on September 12, 1945, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondents, and their agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, W. C. and Agnes Graham, doing business as Graham Ship Repair Co., Oakland, California, and their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or in any other labor organization of their employees, by laying off, discharging or refusing to reinstate any of their employees, by refusing to employ any member of the said labor organization, by conditioning further employment upon membership in

Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or by discriminating in any other manner in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) Recognizing Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, as the exclusive representative of the employees in the appropriate unit described in paragraph 2 (c) of this Order;

(c) Giving effect to their contract, dated January 2, 1945, with the Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or to any extension, (renewal, revision, modification or supplement thereof, or to any superseding contract which may now be in effect, insofar as it affects their employees in the appropriate unit described in paragraph 2 (c) of this Order;

(d) Refusing to bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees in the appropriate unit described in paragraph 2 (c) of this Order, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist East Bay Union

of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley, and Lloyd M. Lee immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the employees named in paragraph 2 (a) of this Order for any loss of pay they may have suffered by reason of the respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondents' offer of reinstatement, less his net earnings during such period;

(c) Upon request, bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the respondents' ma-

chinists, machinist helpers, machinist specialists, machinist apprentices, and machinist trainees, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(d) Post in their ship repair yard at Oakland, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondents' representative, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

(3) On September 12, 1945, the Board's Decision and Order was served upon respondents by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondents' counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certify-

ing and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents, and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said Order of the Board and requiring respondents, and their agents, successors, and assigns to comply therewith.

NATIONAL LABOR

RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,

Assistant General Counsel.

Dated at Washington, D. C., this 28th day of February, 1946.

“APPENDIX A”

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist East Bay Union of Machinists, Local 1304, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

We will bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All machinists of W. C. and Agnes Graham, doing business as Graham Ship Repair Co., including machinist helpers, machinist specialists, machinist apprentices, and machinist trainees but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

The employees to be offered reinstatement with

pack pay are: Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley, and Lloyd M. Lee.

We will not give effect to our contract, dated January 2, 1945, with the Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or to any extension, renewal, revision, modification or supplement thereof or to any superseding contract which may now be in effect, insofar as it affects our employees in the unit above described.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

W. C. and AGNES GRAHAM,
doing business as GRAHAM
SHIP REPAIR CO (Em-
ployer).

By.....
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the Armed Forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 28th day of February, 1946.

[Seal] /s/ JOHN E. LAWYER,
Notary Public, District of Columbia. My Commission expires August 14, 1949.

[Endorsed]: Filed March 6, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

On Petition for Enforcement of an Order of the
National Labor Relations Board

STATEMENT OF POINTS RELIED UPON
BY THE BOARD

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points

upon which it intends to rely in the above-entitled proceeding:

I.

The National Labor Relations Act is applicable to the operations of respondents W. C. and Agnes Graham, doing business as Graham Ship Repair Co.

II.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) of the Act.

III.

The Board's order is valid.

Dated at Washington, D. C., this 28th day of February, 1946.

/s/ A. NORMAN SOMERS,

Assistant General Counsel,

National Labor Relations Board

[Endorsed]: Filed, March 6, 1946. Paul P. O'Brien, Clerk.

SUMMONS AND COMPLAINT

United States of America—ss.

The President of the United States of America:

To W. C. and Agnes Graham, doing business as Graham Ship Repair Co., 501 1st Street, Oakland, California; East Bay Union of Machinists, Local 1304, C.I.O., care of J. H. Sapiro, 1049 Mills Bldg., San Francisco, Calif., and Bay

Cities Metal Trades Council, A.F. of L., care of
Charles J. Janigian, 402 Flood Bldg., San
Francisco 2, Calif.:

Greeting:

Pursuant to the provisions of Subdivision (e) of
Section 160, U.S.C.A., Title 29 (National Labor Re-
lations Board Act, Section 10(e)), you and each of
you are hereby notified that on the 6th day of March,
1946, a petition of the National Labor Relations
Board for enforcement of its order entered on Sep-
tember 12, 1945, in a proceeding known upon the
records of the said Board as

“In the Matter of W. C. and Agnes Graham,
doing business as Graham Ship Repair Co., and
East Bay Union of Machinists, Local 1304,
C.I.O., and Bay Cities Metal Trades Council,
A.F. of L., Party to the Contract, Case No.
20-C-1304,”

and for entry of a decree by the United States Cir-
cuit Court of Appeals for the Ninth Circuit, was
filed in the said United States Circuit Court of
Appeals for the Ninth Circuit, copy of which said
petition is attached hereto.

You are also notified to appear and move upon,
answer or plead to said petition within ten days
from date of the service hereof, or in default of
such action the said Circuit Court of Appeals for
the Ninth Circuit will enter such decree as it deems
just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone,
Chief Justice of the United States, this 6th day of
March in the year of our Lord one thousand, nine
hundred and forty-six.

[Seal] /s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

(Return of Service of Writs attached.)

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its
Chief of the Order Section, duly authorized by Sec-
tion 1 of Article VI, Rules and Regulations of the
National Labor Relations Board—Series 3, as
amended, hereby certifies that the documents an-
nexed hereto constitute a full and accurate tran-
script of a proceeding had before said Board en-
titled, "In the Matter of W. C. and Agnes Gra-
ham, doing business as Graham Ship Repair Co.
and East Bay Union of Machinists, Local 1304,
C. I. O., and Bay Cities Metal Trades Council,
A. F. of L., Party to the Contract," the same
being Case No. 20-C-1304 before said Board; such
transcript including the pleadings, testimony and
evidence upon which the order of the Board in said

proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Howard Myers Trial Examiner for the National Labor Relations Board, dated March 15, 1945.

(2) Stenographic transcript of testimony held before Howard Myers, Trial Examiner for the National Labor Relations Board on March 15, 16, 17, 20, and 21, 1945, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Myers' Intermediate Report, dated June 8, 1945 (annexed to Item 11 hereof).

(4) Copy of order transferring case to the Board, dated June 9, 1945.

(5) Copy of Council's telegram, dated June 13, 1945, requesting extension of time to file exceptions.

(6) Copy of telegram, dated June 15, 1945, granting extension of time to file briefs and exceptions.

(7) Copy of Council's letter, dated July 5, 1945, requesting oral argument before the Board. (7-A) Copy of telegram dated July 6, 1945, advising Board respondents will not file exceptions and brief.

(8) Copy of Council's exceptions to the Intermediate Report.

(9) Copy of notice of hearing for the purpose of oral argument before the Board, dated July 23, 1945.

(10) Copy of list of appearances at oral argument before the Board, dated August 14, 1945.

(11) Copy of Decision and Order issued by the National Labor Relations Board on September 12, 1945, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

(12) Copy of Council's petition for rehearing, dated September 21, 1945.

(13) Copy of order denying petition for rehearing, dated October 23, 1945.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 28th day of February, 1946.

[Seal] /s/ JOHN E. LAWYER,

Chief, Order Section, National
Labor Relations Board.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-C-1304

In the Matter of:

W. C. and AGNES B. GRAHAM d/b/a
GRAHAM SHIP REPAID CO.

and

EAST BAY UNION OF MACHINISTS
LOCAL 1304, C.I.O.

and

BAY CITIES METAL TRADES COUNCIL,
A. F. of L., Party to the Contract.

Room 449, Post Office Building,
7th and Mission Streets
San Francisco, California

March 15, 1945

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 A.M.

Before: Howard Myers, Esq., Trial Examiner.

Appearances: John Paul Jennings and Wallace
E. Royster, 1095 Market Street, San Francisco,
California, appearing on behalf of the National
Labor Relations Board. [1*]

* Page numbering appearing at top of page of original Reporter's Transcript.

PROCEEDINGS

Trial Examiner Myers: The hearing will be in order.

Mr. Jennings: If the Examiner please, Mr. Janigian, Counsel for Bay Cities Metal Trades Council, and for the International Association of Machinists, who are interested in these proceedings as a party to the contract which, under the allegations of the complaint, is stated to be invalid, has requested a continuance until tomorrow morning.

We have agreed with Mr. Janigian that he may have a continuance of 24 hours, if that is satisfactory with your Honor, and he has agreed that he will cooperate with us in an effort to expedite the hearing. I think it will expedite the hearing if the matter is put over until tomorrow morning.

Trial Examiner Myers: The other parties have agreed to the adjournment?

Mr. Jennings: All the parties are agreeable.

Trial Examiner Myers: Very well. We will stand adjourned now until 9:30 tomorrow morning.

(Whereupon, at 10:05 A.M., an adjournment was taken until Friday, March 16, 1945, at 9:30 A.M.) [2]

PROCEEDINGS

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Royster: Ready.

Mr. Sapiro: Ready.

Mr. Stimmel: Ready.

Mr. Janigian: Ready.

Trial Examiner Myers: I would like to announce that this is a formal hearing before the National Labor Relations Board in the matter of W. C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Co., and East Bay Union of Machinists, Local 1304, C.I.O. and Bay Cities Metal Trades Council, A. F. of L., party to the contract, being Case No. 20-C-1304.

The Trial Examiner appearing for the National Labor Relations Board is Howard Myers.

Will counsel please state their appearances for the record?

Mr. Royster: Wallace E. Royster, 1095 Market Street, San Francisco, for the Board.

Mr. Sapiro: J. H. Sapiro, 1049 Mills Building, San Francisco, appearing for Local 1304, and sitting beside me is Jim Smith, Business Agent of 1304.

Trial Examiner Myers: Just the attorneys representing the parties. [6]

Mr. Janigian: Charles J. Janigian, appearing for Bay Cities Metal Trades Council, A. F. of L., party to the contract.

Trial Examiner Myers: Anybody appearing for the Respondents?

Mr. Stimmel: Bernard B. Stimmel appearing for W. C. Graham and Agnes B. Graham and the Graham Ship Repair Co.

Trial Examiner Myers: Anybody else want their appearances noted?

Mr. Janigian: Mr. Thomas Rotell [7]—

Mr. Royster: Mr. Examiner, I have some formal papers to offer in evidence at this time. Copies of all these papers have been served upon the parties. As Board's Exhibit 1(a), I offer the first amended charge in this proceeding; as Exhibit 1(b), the Complaint; as Exhibit 1(c), Notice of Hearing; as Exhibit 1(b), an affidavit of service of the Complaint with a copy of the Charge and the Notice of Hearing by registered mail to International Association of Machinists, 307 Pacific [9] Building, Oakland, California, and East Bay Union of Machinists, Local 1304, C.I.O., Oakland, California; as Board's Exhibit 1(e), an affidavit of personal service of the first amended Charge, the Complaint and Notice of Hearing herein on the Respondents, W. C. and Agnes B. Graham, and Bay Cities Metal Trades Council, party to the contract; as Board's Exhibit 2, affidavit as to service of—first I will make the first two charges filed by individuals whose identities are not disclosed, and ask Board's Exhibit 2(a) be an affidavit as to service of the individual charges.

(Thereupon, the documents above referred to were marked Board's Exhibits 1(a), 1(b), 1(c), 1(d), 1(e), 2 and 2(a) for identification.) [10]

WALTER W. JOHNSON,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Myers: What is your name, sir?

The Witness: Walter W. Johnson.

Trial Examiner Myers: Will you please spell your last name for the record.

The Witness: J-o-h-n-s-o-n.

Trial Examiner Myers: And where do you live, Mr. Johnson?

The Witness: 82 Hillcrest Road, Berkeley.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Royster.

Direct Examination

Q. (By Mr. Royster) What is your business, Mr. Johnson?

A. During wartime I am engaged in the ship-building business, [15] in peacetime, mechanical engineering and gold mining engineering business.

Q. During the year 1944 did you operate a ship repair yard, or a shipyard? A. In 1944?

Q. Yes. A. Yes.

Q. Where was that—did you operate such a yard in Oakland, California—

Mr. Janigian: (Interposing) Excuse me, I wanted to object to the question on the ground that it is compound. It is either shipyard or ship repair, now which?

(Testimony of Walter W. Johnson.)

Mr. Royster: I will straighten that out, Mr. Janigian.

Trial Examiner Myers: Withdraw the question.

Mr. Royster: I will withdraw the question.

Q. (By Mr. Royster) During 1944, did you operate a shipyard in Oakland, California?

A. Yes.

Q. Where was that yard located?

A. Located at the foot of Washington Street, Oakland.

Q. Do you know if that yard is now being operated? A. I do.

Q. And by whom?

A. Graham Ship Repair.

Q. Is Graham Ship Repair Company one of the Respondents in [16] this case?

A. Yes, sir.

Q. During your operation of the yard, Mr. Johnson, did you employ machinists? A. Yes.

Q. Were they represented by any labor organization?

A. They were. I think I should say that I operated the yard, managed the yard, but the name of the company was Judson-Pacific War Industries. They owned the yard. I was a partner and general manager of the yard.

Q. I believe my last question to you, which you answered in the affirmative was: "Were the machinists represented by any labor organization"?

A. Yes.

(Testimony of Walter W. Johnson.)

Q. And what labor organization did represent the machinists?

Mr. Janigian: I will object to the question on the ground that it is calling for the conclusion and opinion of the witness.

Trial Examiner Myers: What?

Mr. Janigian: It is calling for the opinion and conclusion of the witness. I believe the document which would purport to authorize the organization to represent the workers would be the best evidence. It is not the best evidence.

Trial Examiner Myers: Overruled. Will the reporter [17] please read the question?

(The question referred to was read by the reporter.)

A. It was Local 1304, I believe is the number, C.I.O.

Q. Were other employees at your yard in Oakland represented by a labor organization?

A. Yes.

Q. And what is the name of that labor organization? A. That was the A. F. of L.

Q. Can you describe it more fully than the A. F. of L.?

A. Well, I don't know whether I could give all of the name. I couldn't describe it.

Q. Have you exhausted your recollection with respect—

A. (Interposing) Well, American Federation of Labor.

(Testimony of Walter W. Johnson.)

Trial Examiner Myers: And its various affiliates?

The Witness: Yes, the different crafts, with the exception of the machinists were represented by the American Federation of Labor.

Q. (By Mr. Royster) How many employees at your peak operation did you have, Mr. Johnson?

A. We had, during the summer of '44, approximately 650 at one time.

Q. Do you know about how many of those were machinists?

A. No, I would have to approximate it, 15 or 20, or 25 at the peak, say. [18]

Q. When did you cease operating the yard in Oakland to which reference has been made?

A. Well, I last—our last work was completed in December, about December 19th, if I recall, '44.

Q. Did you have machinists on the pay roll during the last days of your operation?

A. Yes, three.

Mr. Janigian: December 19th what?

The Witness: December, 1944.

Q. (By Mr. Royster) Did you give releases to any of those machinists during that month?

A. You mean clearance?

Q. Yes.

A. I don't know whether they were given clearances or not.

Trial Examiner Myers: Did you discharge them?

The Witness: Well, usually I don't handle that,

(Testimony of Walter W. Johnson.)

Mr. Examiner. The last day that they worked, according to the record that I have knowledge of, was on December 19th. Now, the practice has been sometimes men were laid off—if they laid off for a few days waiting other work, they weren't given a clearance, so I don't know whether they were discharged or given a clearance or not.

Q. (By Mr. Royster) During the fall of 1944, Mr. Johnson, did you diminish your labor force?

A. Yes.

Q. Do you know whether or not, when men were laid off during the fall of 1944, that any representation was made to them as to the possibility of resumed operations? [19]

A. Well, I'd think the picture was something like this: We had no mastership repair contracts, that yard was constructed in '43 for building barges and new work, and in 1944 we did some ship repair work, or conversion work, and in December it was a matter of, we had to determine what our policy was going to be, whether we would continue. We started to negotiate for ship repair contracts, and the work had—all the work we had was completed on December 19th, and between that time and January 1st an agreement was worked out to lease the property to the Graham Ship Repair Company. [20]

Mr. Royster: I don't insist on an answer to my question. Will the reporter mark these as Board's Exhibit 3 (a), (b), and (c) for identification.

(Testimony of Walter W. Johnson.)

(Whereupon the document above referred to was marked Board's Exhibit 3 (a), (b), and (c) for identification.)

A. I'm not trying to evade that question.

Trial Examiner Myers: Wait a minute, you don't have to answer that.

The Witness: It's difficult.

Trial Examiner Myers: Never mind.

Q. (By Mr. Royster): Mr. Johnson, I show you a document marked Board's Exhibit 3(a) for identification, and ask you if you can identify it.

A. Yes.

Q. And whose signature appears thereon?

A. James P. Smith.

Q. Does your signature appear anywhere on these papers?

A. Yes, mine is under schedule A.

Q. And does it appear on page—

A. (Interposing) Page 5.

Q. Board's Exhibit 3(b) for identification, can you identify that document? A. Yes. [21]

Q. And what is it?

A. What is the agreement?

Q. What is the document?

A. This agreement between the employees signatory hereto engaged in ship repair in the San Francisco area, agreement between East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, and the Judson-Pacific War Industries.

Q. Is that your signature? A. It is.

(Testimony of Walter W. Johnson.)

Q. As General Manager?

A. Walter W. Johnson, General Manager.

Mr. Sapiro: What is the date of that document?

The Witness: The document is dated April 1st, 1944, but was signed——

Mr. Royster: I don't believe any date of signature appears on there, but you can testify as to when you signed it, if you know.

Trial Examiner Myers: Let it go, will you, please, and you may have an opportunity later, Mr. Sapiro, to bring out the facts, if you want them.

Q. (By Mr. Royster) Board's Exhibit 3 for identification, can you identify that document, Mr. Johnson?

A. Yes.

Q. And what is that?

A. Well, it's a supplemental agreement, an amplification of Section 7 of the ship repair agreement between employers signatory and the East Bay Union of Machinists, Local 1304. [22]

Q. Does your signature appear on there as representative of any employer?

A. Yes, as General Manager of the Judson-Pacific War Industries.

Mr. Royster: All right.

Mr. Stimmel: What is the date on that?

Mr. Royster: I have no further questions, Mr. Examiner.

Trial Examiner Myers: Any questions?

(Testimony of Walter W. Johnson.)

Cross Examination

Q. (By Mr. Stimmel) What was the date on that last document, the date of signing?

Mr. Royster: What date did you sign these documents, Mr. Johnson?

The Witness: Well, in August—I'd like to see it, though.

Trial Examiner Myers: Are you going to offer those papers in evidence?

Mr. Royster: I am, but not right now.

The Witness: August 14th, 1942.

Mr. Royster: Did you sign all of them at that time, on that date?

The Witness: To the best of my recollection, I did.

Mr. Royster: No further questions, Mr. Examiner.

Trial Examiner Myers: Respondents' Counsel any questions to ask this witness?

Q. (By Mr. Stimmel) Mr. Johnson, at the time that you leased the yard to W. C. Graham, did you have any discussion with him or agreement that he was taking over any labor contracts [23] that you might have had with the unions?

A. No, I don't think there was any agreement that he was to take over the labor contracts.

Mr. Stimmel: That is all.

Trial Examiner Myers: Any questions, Mr. Janigian?

Mr. Janigian: Yes.

(Testimony of Walter W. Johnson.)

Cross Examination

Q. (By Mr. Janigian) Mr. Johnson, the sale of the yard to the Graham Ship Repair Company and to Mr. Graham and his wife was affected by you, was it not?

A. Yes. It was not a sale, it was a lease.

Q. It was a lease? A. Lease, yes.

Q. And was this a lease contract of certain machinery and equipment? A. Yes.

Q. In other words, personal property, the personal property that you owned at the site of this shipyard was sold to Mr. Graham and Mrs. Graham, or rather leased to Mr. Graham and Mrs. Graham? A. It was leased.

Q. Under lease contract?

A. That is right.

Q. Now, had you purchased these properties from the Judson-Pacific War Industries?

A. Yes.

Q. Now, at the time of sale, you were conducting the ship construction business or ship repair business under the name of [24] Walter Johnson Company? A. No.

Q. You were not?

A. No, I didn't start, after I purchased the equipment from the Judson-Pacific War Industries I didn't start the yard up or do any work there under the name of Walter W. Johnson Company.

Q. I see.

A. The yard remained inactive from about the

(Testimony of Walter W. Johnson.)

middle—after the work was completed on December 19th, it remained inactive, there was no work.

Q. But you purchased the yard from the Judson-Pacific War Industries about when, Mr. Johnson?

A. Well, it was in November, but we purchased the equipment in November from the Judson War Industries. At that time there was some uncompleted work where it was necessary to employ about seventy-five men, so they completed the work in the yard under their own name, and that was completed on or about December 19th.

Q. December 19th? A. Yes.

Q. You said that your other employees were represented by the A. F. L.? A. Yes.

Q. You couldn't recall the organization. I'll ask you whether or not the organization with which you had an agreement covering your other employees other than machinists, and those of the machinists category, was [25] with the Bay Cities Metal Trades Council?

A. Yes, Bay Cities Metal Trades Council, the contract was with them.

Q. Did this contract signed by the Judson-Pacific War Industries—

A. (Interposing) Was it?

Q. Yes. A. Yes.

Q. Did you personally sign the contract?

A. Yes.

Q. Under the name of the Walter Johnson Company?

(Testimony of Walter W. Johnson.)

A. No, that contract that you're referring to, that I'm referring to, was signed in April 19—I think in April, or in the spring of 1942.

Q. '42?

A. And it was signed between the Judson-Pacific War Industries and the Bay Cities Metal Trades Council. Now, you may have another contract in mind. I'm not certain whether the contract was drawn or not, but the Walter W. Johnson Company, a partnership, last fall did some work over at the Pacific Bridge, and that may be confusing to you.

Trial Examiner Myers: That is another yard?

The Witness: Another yard, yes.

Q. (By Mr. Janigian) That is another yard?

A. Yes.

Q. Was the real property upon which the yard is located sold to Mr. Graham and his wife?

A. You mean the land? [26]

Q. The land, yes.

A. That belongs to the Port of Oakland.

Q. I see.

A. It's held under a lease by the Walter W. Johnson Company.

Mr. Janigian: I think that is all.

Mr. Stimmel: Mr. Johnson, may I ask a question. Did you ever sign a contract with either union for the Walter W. Johnson Company for that particular yard at 501 First Street between December the 19th, 1944, and the date that the yard was leased to W. C. Graham?

(Testimony of Walter W. Johnson.)

The Witness: No, never did. [27].

Redirect Examination

Q. Now at the time, or during the negotiations for the lease of the property to the Grahams, did you have any discussions with either of them concerning labor relations?

A. With Mr. Graham?

Q. Yes. A. I did.

Q. And did you at that time inform him of your contracts, or the contracts of the Judson Company with these various labor organizations?

A. I did.

Mr. Janigian: Object to the question.

Trial Examiner Myers: I'll sustain the objection. Strike out the answer.

Mr. Sapiro: Well, might I suggest that if——

Trial Examiner Myers: (Interposing): Ask him what the conversation was.

Q. (By Mr. Sapiro): Very well. Will you tell us what you said? All I asked him is whether he had such a conversation, that was the question I was going to ask him. Tell us what you said concerning that and what Mr. Graham said?

Mr. Janigian: May I have the time and place, Mr. Sapiro?

Trial Examiner Myers: He asks that you fix the time.

Q. (By Mr. Sapiro): Where was the place of conversation and the time, and tell us who was present? [28]

(Testimony of Walter W. Johnson.)

A. The place would be at the Graham Ship Repair plant, the plant at the foot of Washington Street. The time would have been right after the 1st of January, 1945.

Q. After?

A. After the 1st of January, 1945.

Q. And could you tell us more definitely approximately how close to January the 1st, 1945, it was?

A. Well, I would—it's my belief that it would be during the first week of January.

Q. And tell us who was present at the conversation?

A. At one time there was, besides Mr. Graham, was this labor relations man, I can't think of the gentleman's name.

Q. Is this the gentleman here (indicating)?

A. Yes, Mr. Graham's labor relations man.

Q. Graham?

A. Raymond Lehaney, Lehaney, as near as I can recall. I think there were two conversations, but I didn't pay any particular attention as to the dates or anything, but I advised Mr. Graham, told him that we'd—of our contracts with the Bay Cities Metal Trades and the C.I.O., and I advised him that——

Mr. Janigian: (Interposing): I object to any advice.

Trial Examiner Myers: Tell us what you said.

The Witness: That is what I did. I told him that I——

(Testimony of Walter W. Johnson.)

Trial Examiner Myers: Advice is conclusion. Tell us what you said.

The Witness: I said that they had been very satisfactory, that we had had no difficulties, except small ones that had [29] always been ironed out satisfactorily to all parties concerned, and that I would continue the same relationship. And at the meeting we were standing out in the yard, and Mr. Lehaney was present at one time when I made that very definite statement. Our experience had been very satisfactory. I saw no reason for changing it.

Q. (By Mr. Sapiro): What did either Mr. Lehaney or Mr. Graham say, if anything, in response to that?

A. I couldn't repeat the conversation. I think Mr. Graham was——

Mr. Janigian: (Interposing): I'm going to object to it as incompetent, irrelevant and immaterial.

The Witness: I wouldn't attempt to repeat.

Trial Examiner Myers: Overruled.

Q. (By Mr. Sapiro): Can you give us the gist, not their exact words?

Trial Examiner Myers: Tell us what you remember that they said.

The Witness: No, I can't.

Trial Examiner Myers: Can't remember a word they said?

The Witness: Oh, yes. I can remember—I can tell you about their reactions.

Trial Examiner Myers: I don't want their reactions. Did they tell you to jump in the lake, or

(Testimony of Walter W. Johnson.)

did they say, "That is nice, I'm very glad to hear it," or what?

A. No, Mr. Graham was uncertain as to what to do, because he was not familiar with the labor situation around this bay. Mr. Lehaney—well, I can't tell the words, I wouldn't [30] attempt to.

Trial Examiner Myers: Any other questions?

Mr. Royster: No.

Q. (By Mr. Sapiro): You say that is one of the conversations. Now, was there a subsequent conversation? A. Yes.

Q. (By Mr. Sapiro): Yes. Will you fix the time and place as you did before and the persons present, if you can remember?

A. Well, the next time I took part in any meeting was perhaps about the middle of January between Mr. Lehaney, Mr. Graham, and Mr. Vogel, associated with Mr. Graham, and Mr. Smith of Local 1304. I just happened to drop into the yard that morning, I wasn't asked to take part in the meeting, but I did take part in it.

Q. And will you tell us what you can remember of the conversation and what was said by each one, as best you can remember?

Mr. Janigian: Same objection, Mr. Trial Examiner, incompetent, irrelevant and immaterial.

Trial Examiner Myers: Overruled.

A. Mr. Lehaney had signed an agreement with the A.F.L. covering the employment of machinists in the yard. That was [31] the first time I knew that had been done.

(Testimony of Walter W. Johnson.)

Q. Was that spoken of at that time?

A. That was the purpose of the meeting. Mr. Smith came down and objected to that arrangement.

Q. Proceed, Mr. Johnson.

A. There was a discussion there for perhaps fifteen minutes, and as I recall, the meeting ended with Mr. Smith was going to deliver some documents to Mr. Graham that had a bearing on that particular situation.

Q. Well, pardon me, can you remember anything that was said by any of the parties whose names you have mentioned, as being present at that meeting, the substance of it?

A. Yes, I can recall that Mr. Smith said that he would not let the C.I.O. machinists work under that kind of a situation.

Trial Examiner Myers: You didn't tell us anything at all about any situation. You didn't tell us anything that was said.

The Witness: All right.

Q. (By Trial Examiner Myers): You walked in, and these people were present when you walked into the yard? A. Yes.

Q. And where in the yard did you walk in on these people, somebody's office?

A. Yes, Mr. Graham's office. Then we went out into another smaller building where there was better opportunity for a meeting.

Q. All right, can you remember how the meeting started [32] when you got into this other small building?

(Testimony of Walter W. Johnson.)

A. Well, the discussion was largely between Mr. Smith and Mr. Lehaney.

Q. Do you remember anything that was said by either one of them?

A. I can recall that Mr. Smith said that he would not let the C.I.O. machinists work in the yard with that agreement in effect, the one that Mr. Lehaney or Mr. Graham had signed.

Q. Was there anything said about an agreement that had been signed?

A. To the best of my recollection there was.

Q. Well, can you tell us what was said about it, and by whom?

A. That was about all that was said that was pertinent to it.

Q. Do you know that there was an agreement signed before you got there?

A. Not until that morning.

Q. And who told you about it?

A. It came out in the meeting, during the discussion.

Q. What was said about the agreement?

A. That the agreement covered the use of machinists, A.F.L. machinists.

Q. And was that all that was said about it?

A. Well no, the meeting lasted for fifteen or twenty minutes, but I wasn't a party to the meeting, I just happened to be a spectator, and I wasn't paying a great deal of attention.

Q. What kind of an agreement was it?

(Testimony of Walter W. Johnson.)

A. That I don't know. I had never seen the agreement.

Q. I mean, what was said about the agreement covering everybody [33] in the yard?

A. Everybody in the yard.

Q. Including the machinists?

A. Including the machinists, yes.

Q. And who made that statement, do you remember?

A. No. It was very evident, however, that that was the arrangement. I don't recall who made the statement.

Trial Examiner Myers: Go ahead, Mr. Sapiro.

Mr. Sapiro: I think that is all.

Mr. Royster: I have no further questions.

Trial Examiner Myers: Any other questions?

Recross Examination

Q. (By Mr. Stimmel): Mr. Johnson, this meeting took place about the 15th of January, 1945, did it not?

A. Well about, I would say, it was shortly after Mr. Graham took possession of the yard to start work there.

Q. Was it definitely after the 5th of January?

A. No, I could not say.

Mr. Sapiro: Which conversation are you referring to, the last one?

Mr. Stimmel: Yes, where this contract was discussed with Smith, Lehaney, Johnson, Graham and those others present.

(Testimony of Walter W. Johnson.)

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Janigian: Yes.

Recross Examination

Q. (By Mr. Janigian): Mr. Johnson, the leasing of the personal property to Mr. Graham was concluded in December of 1944, was it not, about December 30th or 31st? [34]

Mr. Sapiro: Well, I might suggest that if the contract is in writing, it can be shown and we'll fix the date.

Trial Examiner Myers: I'll overrule the objection.

The Witness: The date was of January 1st.

Q. (By Mr. Janigian): The delivery was as of January 1st? A. January 1st, 1945.

Q. Yes.

A. At the time Mr. Graham took possession of the yard, the agreement had not been developed into writing due to some work that he had secured, which came into the yard on January the 1st, or on the day before.

Q. Well, isn't it a fact that this lease arrangement was consummated on or about December 31st?

Trial Examiner Myers: What do you mean, consummated?

Mr. Janigian: Well, the agreement was made on December 31st.

A. No, we had had discussions about two weeks prior, the last two weeks of December, of '44.

(Testimony of Walter W. Johnson.)

Q. That is right.

A. About his leasing the plant.

Q. Yes.

A. When he took possession of the plant on January 1st.

Q. You mean January 1st?

A. January 1st, by reason of the fact that the Navy had some boats that just came in that were to be repaired, and he had been negotiating with the Navy for work, a master contract, and so he telephoned to me and asked if he could [35] put the boats in the plant, and I said yes, and I think we received the boats, our few men were there on the Sunday prior to January 1st, 1945, so he came in there and took possession of the property before the lease had been reduced to writing. However, it was a very definite verbal understanding which was being carried out.

Q. The possession of the premises, though, was delivered on January 1st, 1945?

A. '45, and Mr. Graham assumed the expense of operating the yard from that date.

Q. And Mr. Graham has had possession of the yard ever since January 1st, 1945?

A. He has.

Q. You have had no hand in the management of the Graham Ship Repair Company, or its operations, at any time, have you? A. No.

Mr. Sapiro: You mean since.

Q. I mean since January 1st, or at any time before or after. A. That is right.

(Testimony of Walter W. Johnson.)

Q. You had nothing to do with the Graham Ship Repair Company?

A. No, except to counsel with Mr. Graham and offer what assistance or advice I could.

Q. You weren't on the pay roll of the Graham Ship Repair Company? A. No.

Q. And, as a matter of fact, you were conducting a business of your own at the site of the Pacific Bridge Company, [36] isn't that right?

A. That is correct.

Q. Now at the site of the Graham Ship Repair yard, you said that Judson-Pacific, Inc., had conducted an operation, and the actual construction work was concluded about December 19th, I believe you said? A. Yes.

Q. Now, isn't it a fact that the Judson-Pacific War Industries constructed barges and did no repair work on that site?

A. No, that isn't a fact.

Q. What?

A. No, that isn't the fact. We constructed barges, and at the same time in '44 we did repair work.

Q. You did repair work?

A. Yes. In other words, we paid the repair rate, which you'd call that repair work, that was conversion of five barges about 225 feet long into refrigerator barges and air-cooled barges.

Q. But the principal work was the new construction work?

A. In length of time in dollars and cents, I think

(Testimony of Walter W. Johnson.)

that the conversion work was the greatest in dollars and cents.

Trial Examiner Myers: Is that what you call repair work?

The Witness: Repair work, yes.

Mr. Sapiro: Is that carried, the repair rate?

The Witness: Yes. [37]

Mr. Janigian: Just one.

Q. (By Mr. Janigian): Mr. Johnson, you know the difference between repair and conversion work, I presume, you have been in the business long enough?

A. I wouldn't attempt to differentiate between the two.

Mr. Janigian: Well, I'll withdraw the question.

Mr. Sapiro: You and I have argued about that for a long time, Mr. Janigian.

Trial Examiner Myers: Will you please don't break in on Mr. Janigian's examination, Mr. Sapiro?

Q. (By Mr. Janigian): Mr. Johnson, the work that was being done in 1944 by the Judson-Pacific War Industries was reconversion of new vessels which had been built elsewhere, is that not it?

A. No, not as I understand what a new vessel is. Any vessel that has been to sea is not a new vessel, and these vessels we did this conversion work on had all been to sea.

Q. And you paid the repair rate for all such work? A. Yes, we paid the repair rate.

Q. To all mechanics? A. Yes.

(Testimony of Walter W. Johnson.)

Q. To all people working on them?

A. On the conversion.

Q. On the conversion? [38] A. Yes.

Mr. Janigian: I think that is all.

Q. (By Trial Examiner Myers): Now, will you tell me which came first with respect to the lease, the Judson Company or the Walter C. Johnson Company?

A. The Judson-Pacific War Industries came first.

Q. And when was that lease started, approximately? A. In the spring of 1943.

Q. '43? A. Yes.

Q. And how long was that firm in existence at that yard?

A. During the year 1943 until December, 1944.

Q. When did the Johnson Company come in?

A. At that yard, we never did any work in that yard?

Q. You didn't?

A. No, never even took possession of it, because the Judson-Pacific War Industries finished their work in December, that was the agreement, and they carried their employees, remained there until January 1st, 1945.

Q. And the lease which Mr. Graham signed was between the Judson Company and Mr. Graham, and his wife, is that right?

A. No, it was between the Walter W. Johnson Company, because we took over—the Walter W.

(Testimony of Walter W. Johnson.)

Johnson Company took over the property by contract of purchase in November '44.

Q. November what? A. '44.

Q. Then there is just a lease from the Judson to the Johnson Company? [39]

A. No, that is a sale.

Q. It was a sale? A. A sale.

Q. All right. Now, a sale of what, of all the personal property?

A. All the personal property, yes.

Q. Including the lease which the Judson Company held from the Port of Oakland?

A. Port of Oakland which was then cancelled, and a new lease was made between the Port of Oakland and the Walter W. Johnson Company.

Q. And that was sometime in November of '44?

A. No, that was January 1st, 1945. That might be a little difficult, those dates, but it would have been more difficult for——

Q. (Interposing): Was it a simultaneous transaction between the Judson Company to the Johnson Company, and from the Johnson Company to Gramams? A. No.

Q. Well, tell us about them.

A. I say, in November the Judson-Pacific War Industries was ceasing operation, there as a company, it was liquidating its assets, the Walter W. Johnson Company purchased the personal property at what we call plant 2, that is the Graham Ship Repair, but there was some work remaining to be done by the Judson-Pacific War Industries in plant

(Testimony of Walter W. Johnson.)

2, which was terminated, I mean completed in December, 1944, so it was agreed between the Judson-Pacific War Industries and myself that they would remain in possession of the plant and complete [40] the work, and then we would take possession of the plant after January 1st.

Q. And when that was completed did Johnson Company take possession?

A. Not until January 1st.

Q. All right, January 1st. A. Yes.

Q. And when did Johnson sell it to Graham?

A. The same date.

Q. I mean, lease it to Graham.

A. The same date.

Q. The same date?

A. Yes. Well, we contemplated it would be leased the same date, but this work came in before the lease was consummated.

Q. You mean, before the lease was reduced to writing? A. That is right.

Q. But it was the understanding that the lease was to date from and as of January 1st, 1945, is that right? A. That is right.

Trial Examiner Myers: Any other questions, gentlemen?

Redirect Examination

Q. (By Mr. Sapiro): Now, between December the 19th, 1944, and January the 1st, 1945, were there employees in the plant?

A. No, only the superintendent and the assist-

(Testimony of Walter W. Johnson.)

ant, a few in the office, and one or two men for maintenance.

Q. Some maintenance men?

A. Maintenance men.

Q. And were those maintenance men members of 1304? [41]

A. Not to my knowledge. I have no way of knowing, except I don't believe they were. I think the last machinist in our employ was on December 19th, as far as I know.

Mr. Sapiro: That is all.

WARREN C. GRAHAM,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Myers: What is your name, please, sir?

The Witness: Warren C. Graham.

Trial Examiner Myers: And where do you live, Mr. Graham?

The Witness: At the Hotel Coit in Oakland.

Trial Examiner Myers: You may proceed, Mr. Royster.

Direct Examination

Q. (By Mr. Royster): What is your business, Mr. Graham?

A. Engaged in the ship repair and conversion business at 501 First Street, Oakland.

(Testimony of Warren C. Graham.)

Q. Under what name do you operate your business?

A. Under the Graham Ship Repair Company.

Q. And is that a partnership?

A. It's a special partnership composed of my wife as a limited partner, and myself as general partner. [42]

Q. Is your wife Agnes B. Graham?

A. Yes.

Q. Does she take any—does Agnes B. Graham take any active part in the management of the yard?

A. None whatever.

Q. Where is the yard located?

A. 501 First Street, Oakland, which is at the foot of Washington Street.

Q. What is the nature of the work done there?

A. Ship repairs, conversions for vessels of the Navy, and the War Shipping Administration.

Q. What was the approximate value of the repair work performed at the yard during January and February, 1945?

A. Slightly less than \$200,000.00

Q. What do you estimate the annual value of the repair work to be?

A. About two and a half million dollars.

Q. And what was the approximate value of materials and supplies purchased by you during January and February, 1945?

A. About \$60,000.00.

Q. Of that amount, Mr. Graham, approximately what per cent had its origin outside of California?

(Testimony of Warren C. Graham.)

Mr. Janigian: If he knows.

A. My pure guess would be——

Trial Examiner Myers: I don't want any guess, approximately.

The Witness: Approximately fifteen to twenty per cent of that, I would say. [43]

Q. (By Mr. Royster): What do you estimate your annual purchase of supplies and materials to be, on an annual basis?

A. Oh, between six and eight hundred thousand dollars.

Q. Well of that amount, six or eight hundred thousand dollars, what percentage of that do you estimate will be received from points outside California?

A. Approximately the same percentages.

Q. Fifteen to twenty per cent?

A. Yes, that is the average for the average ship repair yard.

Q. To what use are the vessels put that you repair?

A. The vessels are combat vessels of the Navy and merchant ships of the Merchant Marine.

Q. Are the merchant ships of the Merchant Marine used in interstate and foreign commerce?

A. That I couldn't swear to.

Q. Do you concede that the operations of you and your partner at the yard you have described are in interstate commerce?

Mr. Janigian: Asking for the opinion and conclusion of the witness, objected to upon that ground.

(Testimony of Warren C. Graham.)

Trial Examiner Myers: Overruled. Any question, Mr. Stimmel, of jurisdiction?

Mr. Stimmel: Same objection.

Trial Examiner Myers: I'm asking you, have you any question that the Board has jurisdiction over your clients?

Mr. Stimmel: Well, I will state that I doubt that the Court has jurisdiction, because Mr. Graham wouldn't know whether the vessels were used, that the goods he used were [44] used in interstate commerce or not.

Trial Examiner Myers: Well, that question has been answered already. Now, what about, you say you contest the jurisdiction of the Board?

Mr. Stimmel: Yes, on the grounds that the man is not engaged in interstate commerce.

Trial Examiner Myers: All right, will you read—I'll overrule the objection. Read the question to the witness.

(The question referred to was read by the reporter.)

Trial Examiner Myers: Well, it's a question of law. I'll sustain the objection. Go ahead and ask some other question, or reframe your question.

Q. (By Mr. Royster): When did your operations begin at the yard in Oakland, Mr. Graham?

A. January the 1st.

Q. Had the yard been operated previously?

A. We took it over from the Judson-Pacific War Industries through Walter W. Johnson, we were

(Testimony of Warren C. Graham.)

not at the yard until January the 1st. Whether they were active before that, I do not know.

Q. Did any of the employees of Judson-Pacific War Industries or of Walter Johnson continue in your employment?

A. Yes, the first day we had eight employees in the office, which were previously employees of the Judson-Pacific War Industries.

Q. Other than office employees, did you take over any employees of the Judson-Pacific War Industries? [45]

Mr. Janigian: Object to the question on the ground that it's asking for the opinion and conclusion of the witness. Object specifically to the word "take over."

Trial Examiner Myers: Reframe your question.

Q. (By Mr. Royster): When did you begin hiring machinists at your yard?

A. January the 3rd.

Q. And where did you procure those machinists?

A. To my direct knowledge and belief, to my direct knowledge I don't know, I ascertained from our superintendent that these men, we hired three men on the 3rd of January. It's my information from the plant that those men appeared at the gate on that day, and they were hired by the superintendent.

Q. Do you have any agreement with the Navy with respect to hiring employees? A. Yes.

Q. What is that agreement?

A. In order not to disturb the manpower ceiling,

(Testimony of Warren C. Graham.)

or affect, seriously affect the working in the other shipyards, ship repair yards, we agreed that we would only hire previous employees of the Judson-Pacific War Industries, or men who were taken out of the bay area, that was later revised to include men from new construction yards, or those laid off previously, ten days from a ship repair yard.

Q. Have you followed that agreement?

A. Yes, sir.

Q. Have you then hired workers who previously had been employed by Judson-Pacific? [46]

A. Yes, sir.

Q. With respect to the three machinists who went on your pay roll on January 3rd, is it not true that they came from Judson-Pacific?

A. They were previously employees of the Judson-Pacific War Industries. The reason why I know, because we prepared a list of all the Judson-Pacific War Industries employees in conjunction with the Judson-Pacific War Industries and presented that to the Navy.

Q. Did you use that list also for the purpose of recruiting workers?

A. We sent that list to the War Man Power Commission so they would only send us workers from that list.

Q. When you began your operations on January 1st, did you know whether Judson-Pacific War Industries employees had been represented by a labor organization? A. No, sir.

Q. (By Mr. Royster): Have you at any time

(Testimony of Warren C. Graham.)

made any inquiry respecting labor relations affecting machinists in ship repair yards, in Alameda County? [47]

Mr. Janigian: Objected to on the ground it's incompetent, irrelevant and immaterial.

Trial Examiner Myers: It calls for a yes or no answer. Overruled.

The Witness: Yes.

Q. (By Mr. Royster): When did you make such inquiry?

Mr. Janigian: Same objection.

Trial Examiner Myers: Overruled.

The Witness: Between the 3rd of January and the 10th.

Trial Examiner Myers: This year?

The Witness: Of this year, yes.

Q. (By Mr. Royster): Of whom did you make inquiry?

A. Of Mr. Raymond Lehaney, who was employed by us as a labor relations director.

Q. When did you employ Mr. Lehaney?

A. In December, 1944, the latter part.

Q. What was Mr. Lehaney's background?

A. Mr. Lehaney had spent practically all of his life in the labor movement, had been a reporter on a labor paper, and his last employment was public relations director of the west coast for the Teamsters Union.

Trial Examiner Myers: What union?

The Witness: Teamsters Union.

(Testimony of Warren C. Graham.)

Trial Examiner Myers: You mean that was his job just prior to going with you?

The Witness: He retained that job in agreement with the union, he retained that job in addition to working for me.

Trial Examiner Myers: You mean while he was in your employ? [48]

The Witness: As labor relations director.

Trial Examiner Myers: He also had this job with the Teamsters Union?

The Witness: That is correct, that is any agreement with the Teamsters Union, that he would retain that job as well as working for me.

Q. (By Mr. Royster): You say your agreement with the Teamsters Union; did you agree with them with respect to Mr. Lehaney's employment?

Mr. Janigian: I'm going to object to any questions with respect to Mr. Lehaney's employment, on the ground that it's incompetent, irrelevant and immaterial. I don't think Mr. Lehaney is on trial, nor the Teamsters Union is on trial. What difference does it make?

Trial Examiner Myers: Overruled.

Mr. Royster: Mr. Lehaney is an employee of Mr. Graham.

Trial Examiner Myers: I have made my ruling.

(Last question was read by the reporter.)

The Witness: Yes.

Trial Examiner Myers: Is that the A.F.L. Teamsters Union?

(Testimony of Warren C. Graham.)

The Witness: Yes, Mr. Twohy the Vice President of the Union.

Q. (By Mr. Royster): Well, just for the sake of the record, is that the International Brotherhood of Teamsters, Warehousemen, Chauffeurs and Helpers of America, A.F.L.?

Mr. Janigian: Well, just a minute, may it be understood that I have an objection to all questions affecting [49] Mr. Lehaney's background, his previous employment, present employment, or any of those circumstances.

Trial Examiner Myers: How can you have an objection to something that wasn't brought out yet? If you'll reframe your objection.

Mr. Janigian: All right. I'll object to the last question specifically as incompetent, irrelevant and immaterial, and time consuming.

Trial Examiner Myers: Overruled.

The Witness: Yes.

Q. (By Mr. Royster): Did you give Mr. Lehaney any instructions with respect to dealing with labor organizations affecting employees at the yard?

A. Yes.

Q. What instructions did you give him?

Trial Examiner Myers: When did you give him these instructions?

The Witness: The latter part of December.

Trial Examiner Myers: '44?

The Witness: '44, about the 20th, I imagine.

Trial Examiner Myers: You mean after you hired him?

(Testimony of Warren C. Graham.)

The Witness: After we had agreed to employ him, I told him that we wanted to establish fair relations with labor on the west coast, and his job would be to show that we would try to enjoy pleasant relations with labor, and his job would be to promote such relations.

Q. (By Mr. Royster): Did you——

A. I told him that his job would be to report to me anything [50] which the management could do, which would affect those relations.

Q. In early January, 1945, did you and Mr. Lehaney visit the offices of Bay Cities Metal Trades Council? A. We did.

Q. Can you state, can you give me the date more closely than early January?

A. January the 2nd.

Q. Did you have a conversation there?

A. Yes, sir.

Q. With whom?

A. We met with Mr. Wynn, who is Secretary of the Council, Mr. Rotell, and two or three of the others.

Q. What is Mr. Rotell's position; did you know at that time what his position was?

A. Well my—I was informed that he had——

Trial Examiner Myers: Do you know what it was then?

The Witness: Definitely not, except that I——

Trial Examiner Myers (Interposing): All right, what was his job then?

Mr. Janigian: Assistant Secretary, Mr. Myers.

(Testimony of Warren C. Graham.)

Trial Examiner Myers: And does he have that job now?

Mr. Janigian: Yes.

Trial Examiner Myers: And what is his first name, please?

Mr. Janigian: It's Thomas Rotell.

Trial Examiner Myers: And what is Mr. Wynn's first name?

Mr. Janigian: A. T. Wynn. [51]

Q. (By Mr. Royster): What was the conversation that you and Mr. Lehaney had with Mr. Rotell, Mr. Graham?

A. I had stated that I had previously operated under—in the East in a closed shop A.F.L. agreement, and that we had enjoyed pleasant relations with labor and we wanted to do so while we were operating in the bay area.

Q. What did Mr. Rotell have to say to that?

A. Well, we were—he was very pleased, and stated that he would assure us that such relations would continue or be effected here, and stated that it was his desire that we sign an agreement for the workers, of any workers we would employ in this particular area.

Q. What did he say to you specifically regarding machinists?

A. I don't recall any specific statement regarding machinists, except to say that he wanted all the workers to be affiliated with the A.F.L. Now, whether machinists were mentioned specifically or not, I do not recall.

(Testimony of Warren C. Graham.)

Q. Is it not true, Mr. Graham, that Mr. Rotell told you on that occasion that no new ship repair yard operation would come into the bay area unless the machinists were covered by an A.F.L. contract?

Mr. Janigian: Object to the question on the ground that it's leading and suggestive, and an attempt on the part of Counsel to cross examine his own witness.

Trial Examiner Myers: Overruled.

A. I do not recall specifically said machinists, but he said all workers.

Q. You deny then that that remark was made specifically as to machinists? [52]

A. I do not recall it as being made specifically to machinists, but I do recall it as being all workers. There was exhibited to me a contract with a company called the Ship Repairers, which it was stated that such an agreement was effected with them, and it was expected that an agreement, similar agreement would be effected with us.

Q. Well, did you sign a contract with the Bay City Metal Trades on January 2nd?

A. No, sir. We talked and said that we'd look into the matter, and I told them at the time that Mr. Lehaney was our labor relations director and would have authority on my authority to negotiate and sign any contract with them.

Q. Now, you say that you told Mr. Rotell that you wanted to look into the matter. What did you mean by that, Mr. Graham?

(Testimony of Warren C. Graham.)

A. We wanted to investigate their particular contract.

Q. Was a contract offered to you on that day?

A. I don't recall one being so offered, except to say that they would expect us to sign a contract similar to this one that was exhibited.

Q. Did you take a form of contract away with you for study or examination? A. No, sir.

Q. What inquiry did you feel it necessary to make so that you told Mr. Rotell you would make inquiry?

A. Well, I had told Lehaney that we would investigate the complete situation here, and he would give me a report on it.

Q. Do I understand from that, that you directed Mr. Lehaney to make an investigation? [53]

A. That is correct.

Q. Did he make such an investigation, do you know? A. Yes.

Q. Did he report to you on it?

A. Yes, it developed as the days went by that there existed, in our particular area where we operated a predominance of C.I.O. machinists.

A. We discussed the thing practically daily, almost every day.

Trial Examiner Myers: For how long?

The Witness: Oh, up until, I guess, about the 10th, approximately the 10th.

Trial Examiner Myers: When did the reports start to come in?

(Testimony of Warren C. Graham.)

The Witness: Immediately when he arrived, we went out that day.

Trial Examiner Myers: You mean on the 2nd of January?

The Witness: The 2nd of January.

Trial Examiner Myers: And from the 2nd until the 10th he made reports to you almost daily?

The Witness: That is correct.

Trial Examiner Myers: Were the reports in writing? [54]

The Witness: No.

Trial Examiner Myers: Just oral?

The Witness: Oral.

Q. (By Mr. Royster): What report did he make to you, if any, with respect to machinists?

A. He reported that there existed in this area of our yard a number of C.I.O. machinists, that the various ship repair yards in our category employed C.I.O. machinists, and recommended that—

Trial Examiner Myers (Interposing): Don't tell us recommended, tell us what he said.

The Witness: Said that he had talked to the various labor people, and he thought the best policy for the company would be to sign a contract with the Bay City Metal Trades Council for the remaining craft, and with the C.I.O. for the machinists.

Mr. Janigian: I'm going to ask that the answer be stricken, because it's incompetent, irrelevant and immaterial. We're faced in this case, Mr. Trial Examiner,—I'll be very brief,—with a complaint which alleges a certain violation of the National

(Testimony of Warren C. Graham.)

Labor Relations Act. The conversation which Counsel is attempting to extract from this witness has to do with the existence of C.I.O. contracts and the existence of C.I.O. machinists in the area where Mr. Graham and his wife operate the yard. I know nothing in the act which provides that any particular union has territorial jurisdiction, so to speak, or that the fact that other plants have contracts with a union in itself [55] compels an employer to sign a similar contract. I think we ought to limit this inquiry to the issues, were the machinists represented, and do they constitute an appropriate unit, and does the unit covered by the A.F.L. contract constitute an inappropriate unit, and is therefore void.

Trial Examiner Myers: Overruled.

Q. (By Mr. Royster): Did Mr. Lehaney report to you with respect to the union affiliation of machinists working at the yard?

A. Yes. He said that our machinists in the yard then belonged to the C.I.O. union.

Q. Just to clarify your testimony, I believe,—I may be in error—

Trial Examiner Myers (Interposing): Well, let's not start all those preliminaries now, let's get one question after another and go at it snappy. What is it, Mr. Janigian?

Mr. Janigian: I was going to ask that the answer be stricken on the ground that it's hearsay, second class removed.

Trial Examiner Myers: Overruled.

(Testimony of Warren C. Graham.)

Q. (By Mr. Royster): Did you enter into a collective bargaining contract with any labor organization?

A. Mr. Lehaney told me he did. I did not see it.

Trial Examiner Myers: Did you sign it?

The Witness: I did not, no.

Trial Examiner Myers: Was it signed on behalf of the ship yard?

The Witness: Mr. Lehaney so signed it. [56]

Trial Examiner Myers: Have you got a copy of it?

The Witness: No, sir, I have not.

Trial Examiner Myers: Did you ever see one?

The Witness: Two days ago, yes, sir.

Trial Examiner Myers: Where did you see it?

The Witness: In my lawyer's office.

Trial Examiner Myers: Has he got it?

The Witness: No, Mr.—

Mr. Janigian: I have it.

Trial Examiner Myers: You, Mr. Janigian?

Mr. Janigian: That is right.

Trial Examiner Myers: All right, go ahead.

Q. (By Mr. Royster): Did you instruct Mr. Lehaney as to his authority to sign a collective bargaining agreement?

A. I did.

Q. And what instruction did you give him in that respect?

A. I authorized him to negotiate and sign a contract.

Trial Examiner Myers: With whom?

(Testimony of Warren C. Graham.)

The Witness: With such unions as in his opinion was the appropriate ones.

Q. (By Mr. Royster): Do you know James P. Smith, business agent of East Bay Local Union of Machinists, Local 1304?

A. Yes, sir.

Q. Have you ever had a conversation with him? A. Yes, sir.

Q. When was the first conversation?

A. On or about the 5th of January.

Trial Examiner Myers: What year?

The Witness: 1945, about 10 P. M. He called me [57] at the Hotel Maurice, where I was living, and said he wanted to meet with me, told me who he represented, that he represented the 1304 C. I. O. machinists. I told him that I had employed a labor relations director from labor, and I felt sure that Mr. Lehaney would be glad to meet with him, and told him I would—told him where he could get ahold of Mr. Lehaney, and I so instructed Mr. Lehaney to get ahold of him.

Q. (By Mr. Royster): Did you ever sign a collective bargaining contract with Local 1304?

A. No, sir.

Q. Did you ever offer to sign such a contract?

A. I, myself, and Lehaney told Mr. Close, our plant superintendent——

Q. (Interposing): Just a moment, Mr. Graham, who told Close?

A. Lehaney and myself both together told Close to sign such an agreement.

(Testimony of Warren C. Graham.)

Q. When was this?

A. Shortly after the 5th of December.

Trial Examiner Myers: December?

The Witness: January.

Trial Examiner Myers: You mean shortly after the 5th of January, 1945?

The Witness: That is right.

Q. (By Mr. Royster): Do you know whether or not Mr. Close ever signed such an agreement?

A. No, sir. Mr. Close reported to me that he endeavored to get in touch with Mr. Smith and he could not. [58]

Q. It's true, is it not, Mr. Graham, that on January 25, 1945, all Local 1304 machinists were discharged from the yard?

A. January, what date?

Q. 25, 1945.

A. Around that date there was—they weren't discharged, there was a change between—to A. F. L. machinists.

Q. What was that change, Mr. Graham?

A. A. F. L. machinists were replaced, the C. I. O. machinists.

Q. Well, were the C. I. O. machinists offered opportunity to continue their employment?

A. I was told so, I didn't—to my own knowledge and belief I do not know.

Q. Who, if any one, had a conversation with the C. I. O. machinists with respect to their employment on that date; who, if any one with your company, representing you?

(Testimony of Warren C. Graham.)

A. I had authorized Lehaney to handle such a matter, and I understand also that Mr. Close, our plant superintendent, was associated with the handling of the matter.

Q. Well, is it true that after January 25, 1945, Local 1304 machinists were not permitted to work in your yard?

A. I wouldn't say not permitted, they didn't work.

Q. You testified that the A. F. L. machinists took over, or replaced C. I. O. machinists?

A. That is right, replaced.

Q. Subsequent to January 25, 1945, did you require, as a condition of employment, that a machinist belong to a union [59] affiliated with Bay City Metal Trades Council? A. Yes, sir.

Q. Have you been requested to reinstate Local 1304 machinists to the employment they had at your yard on January 25, 1945?

Trial Examiner Myers: Do you understand the question?

The Witness: Yes, I do. I'm trying the figure out the answer to it. I wouldn't say official request, but Mr. Smith and I have discussed the possibility of such employment.

Q. (By Mr. Royster): Have you ever offered to reinstate these men to their employment?

A. I told Mr. Smith that we would if we could work out some kind of an agreement with the A. F. L.

Mr. Royster: That is all. [60]

(Testimony of Warren C. Graham.)

Cross Examination

By Mr. Stimmel:

Q. Mr. Graham, on January the 25th, did you post any notice in your plant to the effect that men to continue their employment as machinists had to be affiliated with the A. F. L.? A. No.

Q. Was any notice posted on that date or subsequent thereto saying that any man who was a member of the C. I. O. could not continue as a machinist? A. No.

Trial Examiner Myers: Did you post the contract?

The Witness: I don't understand. [61]

Trial Examiner Myers: You made a contract with the Metal Trades, didn't you? Did you post that contract?

The Witness: No.

Q. (By Mr. Stimmel): Mr. Graham, in connection with the amount of materials that you use or buy for use in your yard, my recollection is that you testified that about fifteen per cent of your material was purchased outside of the state, is that correct?

A. That is correct.

Q. How much of that material that comes from outside of the state is actually bought by you from outside the state, that is ordered placed for the outside of the state?

Mr. Sapiro: Object to that as immaterial.

Trial Examiner Myers: Overruled. You may answer.

(Testimony of Warren C. Graham.)

A. My approximation would be half of that, about seven per cent, something like that.

Q. Then, I understand the answer to be that about seven or seven and a half per cent of the material that is purchased is actually ordered from outside of the state?

A. That is right, New York, Detroit, or similar places.

Mr. Stimmel: That is all.

Trial Examiner Myers: Any questions, Mr. Janigian?

Mr. Janigian: Yes.

Cross Examination

By Mr. Janigian:

Q. With respect to this percentage that you have mentioned, Mr. Graham, as to materials purchased outside the state, have you made any check of your books prior to testifying here this morning, to ascertain just [62] what the percentages were of purchases outside the State of California?

A. Not for this particular purpose, but for my own information, for instance, ordering a desk from Shaw Walker Company in Milwaukee, or vapor car boilers from New York City.

Q. I mean, your best estimate is what you have given?

A. To my best knowledge and belief, whether that is the exact amount, but I would say it would be approximately so.

Q. The both, the 15th and the seven per cent, or thereabouts?

A. That is right.

(Testimony of Warren C. Graham.)

Q. (By Mr. Janigian): Now, you gave certain estimates as to your yearly purchases. Now, that is based upon any definite estimate, Mr. Graham, of work that you expect to do?

A. The usual percentages of such a purchase in a ship repair yard.

Q. I know, but with respect to this volume of, I believe you testified, six to eight hundred thousand dollars worth of supplies that you said you would use in the course of a year, where did you obtain those figures?

A. Based on a business of approximately \$200,000.00 per month, there would be around fifty to sixty thousand dollars of merchandise purchased for that.

Q. Isn't this a fact, Mr. Graham, that it's uncertain now [63] whether you will even have any business to do next month or the month after?

A. That is true.

Q. I mean, ship repair work is very indefinite and uncertain, is that right?

A. That is true.

Q. And since you have operated that yard, you have had a peak employment of how many persons?

A. Four hundred seven.

Q. And how many did you have as the lowest number on your payroll?

A. Twenty-four.

Q. So employment and work varies from day to day almost?

A. Definitely.

Q. Now, at the time you visited the offices of the Bay Cities Metal Trade Council, Mr. Gra-

(Testimony of Warren C. Graham.)

ham, you told the A. F. L. representatives, whom you met on that occasion, that Mr. Lehaney had been authorized to enter into collective bargaining agreements on behalf of the Graham Ship Repair Company, isn't that right?

A. I didn't use the past tense. The first time I had mentioned it even to Lehaney was at that meeting.

Q. I say, is authorized or was authorized.

A. I said, "I'll authorize Lehaney to sign."

Q. And what time of the day was this when you visited the offices of the Bay Cities Metal Trades Council? A. I don't recall.

Q. Now, after this conversation you had with Mr. Smith on [64] the 5th day of January, did you have any further conversations with him, before the 15th of, or thereabouts, of January?

A. I do not recall any, no.

Q. He didn't call on you?

A. Not that I remember, no.

Q. Now, will you state whether or not on or about January 25th, there was a strike among the machinists employed at your yard?

Mr. Sapiro: Object to that as calling for a conclusion. Let him tell us what happened.

Trial Examiner Myers: Overruled.

A. I was kept informed by Mr. Lehaney and Close as to what was going on, and their statement to me was that the A. F. L. men were in the yard and the C. I. O. men would not remain, and they left.

(Testimony of Warren C. Graham.)

Q. Isn't this the fact, Mr. Graham, that the C. I. O. machinists were not laid off by the Graham Ship Repair Company, but that upon the hiring of A. F. L. machinists, the C. I. O. machinists left the job?

A. That is my understanding. [65]

Redirect Examination

By Mr. Royster:

Q. Mr. Graham, on January 25, 1945, when A. F. L. machinists were brought into work, did you not know, as an employer, that C. I. O. and A. F. L. machinists don't work side by side in Alameda County?

A. I was told then at that time that they wouldn't.

Q. Did you have any information in that respect before that date?

Mr. Janigian: Object to the question on the grounds it's incompetent, irrelevant, and immaterial whether they would work or would not work together.

A. Ships of the merchant service such as Liberty ships, seagoing tugs, combat vessels of the Navy, such as LCI's, that is Landing Craft Infantry, the land craft mechanized, other yard craft belonging to the Navy, and flotilla—small flotilla flag ships as used in combat. [66]

Q. The merchant ships on which you make repairs are all seagoing vessels, are they not?

A. Yes, sir.

(Testimony of Warren C. Graham.)

Q. Not used in local transportation around the bay? A. Yes, that is correct.

Q. And the combat craft upon which repairs have been made, do you know whether or not they have been damaged in combat at some far off spot?

A. We have not had one in the yard yet that is damaged in actual combat.

Q. You testified in response to a question from Mr. Janigian that the payroll, the number of employees on the payroll fluctuated greatly from, I believe, a low of twenty-four, to a high of four hundred seven. Can you tell me when you had only twenty-four employees on the payroll?

A. During the time we were having this trouble.

Q. Well, can you be more specific?

A. Which was about shortly after the 26th, perhaps a week later, or a week or two later.

Trial Examiner Myers: 26th of what?

The Witness: Of January.

Trial Examiner Myers: 1945?

The Witness: I recall better now. It was approximately the middle of February, approximately the middle of February, between the 10th and 15th of February.

Q. (By Mr. Royster): Mr. Graham, is it not a fact that on your payroll for the week ending January 7th, 1945, you had approximately fifty employees? [67]

A. That would be approximately correct.

Q. That is my question, approximately.

(Testimony of Warren C. Graham.)

A. Yes.

Q. And on the payroll period for the week ending January 14, 1945, approximately one hundred thirty-three employees?

A. That would be approximately correct.

Q. And on the payroll period ending January 21, 1945, approximately one hundred eighty-two employees?

A. You're going pretty rapid.

Q. I'm asking for an approximation.

A. Just approximately, yes.

Q. And on the payroll for the period ending January 28th, 1945, approximately three hundred twenty-nine employees?

A. What date was that?

Q. January 28th.

A. It was during the latter part of November, between the 25th to the 30th——

Trial Examiner Myers: You mean January.

The Witness: January, where we were active and required about that number of employees. I think there were even more.

Q. (By Mr. Royster): And finally on the payroll of February 4, 1945, approximately four hundred twelve employees?

A. My recollection is the peak was before that. Whether that is the exact date, I'm not certain.

Q. How many employees are there on the payroll as of today, if you know? [68]

A. About two hundred and eighty-nine.

Q. On January 2, 1945, Mr. Graham, when, as you testified you had a conference with Mr. Ro-

(Testimony of Warren C. Graham.)

tell, at which conference Mr. Lehaney also was present, did you tell Mr. Rotell of your agreement with the Navy, whereby you obligated yourself to hire employees of Judson-Pacific War Industries?

A. No.

Q. Do you know of your own knowledge, Mr. Graham, when this alleged contract with Bay Cities Metal Trades Council was signed?

A. No, sir.

Q. You were present, were you not, when Mr. Johnson testified earlier this day? A. Yes, sir.

Q. Do you recall his testimony to the effect, that about the middle of January he came to your yard and entered into a conference with you, Mr. Lehaney, and perhaps one or two others?

A. Yes, sir.

Q. At which time there was discussion with respect to the signing—to a signed contract with the Bay Cities Metal Trades? A. Yes, sir.

Q. Do you recall the date of that occasion?

A. My recollection of it is that it was the 16th of January.

Q. Assuming, then, your recollection to be correct, that the 16th of January was the date of this conference, when was the A. F. L. Bay City Metal Trades Council contract signed with respect to that date, had it just been signed, or a [69] week before?

A. Of my own knowledge, I have no direct knowledge, except what I was told.

Trial Examiner Myers: Who told you?

The Witness: Lehaney.

(Testimony of Warren C. Graham.)

Trial Examiner Myers: What did he say?

The Witness: That it was around the 13th or 15th, the exact date I don't recall.

Trial Examiner Myers: Of January?

The Witness: January, yes.

Q. (By Mr. Royster): After the 13th, or after the contract was signed, whether it be the 13th or 15th of January, did you make any change in the hiring of machinists?

A. Yes, we secured them through the A. F. L.

Q. When did you start securing them through the A. F. L.?

A. On or about the 26th of January.

Q. Did you hire any machinists between the date of the signing of the Bay Cities Metal Trades Council and the 26th of January?

A. My recollection is we did.

Q. From whom—or rather, did you hire Local 1304 machinists during that period? A. Yes.

Mr. Janigian: Object to it on the ground it's leading and suggestive.

Trial Examiner Myers: Overruled.

Q. (By Mr. Royster): Did you notify any workman in the yard, after the signing of this contract, to the effect that a closed shop contract existed with the Bay Cities Metal [70] Trades Council?

A. Not to my knowledge, no.

Mr. Royster: That is all.

Trial Examiner Myers: Any questions, Mr. Stimmel?

(Testimony of Warren C. Graham.)

Mr. Stimmel: No questions.

Trial Examiner Myers: Mr. Janigian?

Mr. Janigian: I have some questions.

Trial Examiner Myers: Go ahead.

Recross Examination

By Mr. Janigian:

Q. You said that from the time the A. F. L. contract was signed to January 26th machinists were hired; you said, I understand, there were 1304 machinists? A. Yes.

Q. You don't know of your own knowledge whether they were 1304 or any other type of machinist, do you?

A. I heard them call the Twin Oaks number which is the C. I. O. hall, and asks for machinists to be sent, whether they came from there or not, I don't know.

Q. I see. But you didn't talk to these men to ascertain what their affiliations were?

A. No, no.

Mr. Janigian: That is all. [71]

Trial Examiner Myers: Will you please call your next witness, Mr. Royster.

Mr. Royster: Before doing so, Mr. Examiner, I'd like to offer in evidence as Board's Exhibit next in order the answer filed in this proceeding by Bay City Metal Trades Council.

Trial Examiner Myers: Any objection, Gentlemen?

Mr. Stimmel: What is the document?

Mr. Sapiro: The answer of the Bay City Metals.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I'll ask the reporter to please mark it Board's Exhibit 4.

(Thereupon the document above referred to was marked Board's Exhibit 4 and received in evidence.)

(Board's Exhibit No. 4 set out in full on page 15 of this Record.)

Trial Examiner Myers: Now, what about these other formal papers that were offered in evidence this morning?

Mr. Sapiro: Only for identification so far.

Mr. Royster: Mr. Examiner, will you indulge me for thirty seconds, and I'll have an answer on that?

Trial Examiner Myers: Very well.

Mr. Royster: I'm advised that there is now no [73] objection on the part of the individuals who signed the individual complaints, to their names being identified at this time?

Trial Examiner Myers: All right, who are they?

Mr. Royster: I'll state the names on the record. The individual charge filed under date of January 3, 1945, was signed by Frank Shaffer. And the individual charge denominated first amended charge and signed March 7, 1945, was signed by E. T. Hostetler.

Trial Examiner Myers: Now, is there any ob-

jection to these papers going in evidence, Gentlemen?

Mr. Janigian: No objection.

Mr. Stimmel: No objection.

Trial Examiner Myers: There being no objection, the papers are received in evidence, and I'll ask the reporter to please mark them as Board's Exhibit 1(a) through 1(e), inclusive, and Board's Exhibit 2 and 2(a).

(Thereupon, the documents heretofore marked Board's Exhibit 1(a), 1(b), 1(c), 1(d), 1(e), and Board's Exhibit 2 and 2(a) for identification were received in evidence.)

(Board's Exhibits 1(b), 1(c), 1(d), 1(e), and Board's Exhibit No. 2 and 2(a), set out in full on pages 1 to 14, inclusive, of this Record.)

JAMES W. CLOSE,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined, and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: James W. Close.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: C-l-o-s-e.

(Testimony of James W. Close.)

Trial Examiner Myers: And where do you live, Mr. Close?

The Witness: 4154 Mountain View Avenue, Oakland.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Royster.

Q. (By Mr. Royster): What is your occupation, Mr. Close?

A. Hull superintendent.

Q. And who is your employer?

A. Mr. Graham, Graham Ship Repair.

Q. How long have you been employed by Mr. Graham?

A. Since he operated the plant, since he took over the plant.

Q. And approximately when was that?

A. 1st of January, of this year.

Q. Who was your prior employer?

A. Walter W. Johnson.

Q. And how long were you employed by Mr. Johnson?

A. From March, 1943, up until the 1st of January, '45.

Q. During your employment by Mr. Johnson, was there another [75] name given to the company for which you were employed?

A. Judson-Pacific War Industries, plant No. 2.

Q. Where is plant No. 2 of the Judson-Pacific War Industries located with respect to the place where you now work? A. Identical.

(Testimony of James W. Close.)

Q. And what was the nature of your employment with Judson-Pacific War Industries?

A. General superintendent and plant manager.

Q. Now, directing your attention, Mr. Close, to the closing weeks of December, 1944, was there any changes made with respect to employment of machinists? A. None whatsoever.

Q. Were machinists employed in the yard where you now work in the last two weeks of December, 1944? A. No, none.

Q. By your answer to that—strike that. Were machinists doing any work at the yard during the last two weeks of December, 1944?

A. There was very little done. I don't recall just the exact amount of men involved, but there was possibly a little maintenance work only.

Q. Well, I'll get around to the question that I should have asked in the first place. Were machinists on the payroll during the last two weeks of December, 1944? A. Yes.

Q. Do you happen to know the names of the machinists who were on the payroll at that time?

A. I would have to check to be positive, but I'm pretty [76] sure, in fact I know Mr. Hostetler was one, and I know that Mr. Jim Potter, he was on the payroll, and now I would have to check the clearance records to find out the balance of them.

Q. Do you know whether or not Mr. Ashcraft was on the payroll in the, I'll make it the last week of December, 1944?

(Testimony of James W. Close.)

A. Ashcraft, I don't recall the name. I could probably know the man if I seen him.

Q. Now, on the last day of December, 1944, December 31, were any machinists discharged?

A. No.

Q. Had any such discharges taken place would you in the ordinary course of your duties, have been advised of them? A. That is right.

Q. Do you know James B. Smith?

A. I do.

Q. Did you have a conversation with Mr. Smith in January, 1945? A. Yes, sir.

Q. Will you relate to us the first of those conversations, when it took place, approximately?

A. It was the early part of January, the date, I don't recall.

Q. Where did it take place?

A. In my office, at the plant. I believe Mr. Lehaney and Mr. Smith was present at the time. I think the conversation went on that Mr. Smith asked Mr. Lehaney to adopt his policy which machinists he was going to use. The [77] question was brought up at that time which machinists they were going to use, whether A. F. L. or C. I. O., and Mr. Smith asked him at that time to adopt his policy and then call him later.

Q. Did Mr. Lehaney make any response to that, that you now recall?

A. Only that he would think it over.

Q. Did you have a subsequent conversation with Mr. Smith?

(Testimony of James W. Close.)

A. Over the phone several times, yes.

Q. Will you relate to us when the first phone conversation took place, if you recall?

A. I think the first phone conversation would be around, some time a little before the middle of January, regarding a C. I. O. machinists' contract.

Q. And what was that contract?

A. I asked Mr. Smith to prepare a contract to bring in the yard for signature.

Q. And a contract covering any specific group of employees? A. The machinists only.

Q. And did Mr. Smith reply to you?

A. He said he would get the contract up.

Q. Now, did you have a subsequent conversation with Mr. Smith after this one you have just related?

A. Yes, I talked to Mr. Smith two or three times after that.

Q. Do you recall talking to Mr. Smith on or about the 17th day of January, 1945?

A. Well, around about that time, I don't recall the exact dates. [78]

Q. Was that a telephone conversation?

A. Telephone conversation.

Q. Can you give us the substance of that conversation?

A. It was again regarding the contract.

Q. A contract relating to what?

A. The contract relating to the C. I. O. machinists for use in the yard.

(Testimony of James W. Close.)

Q. And what did you tell Mr. Smith with respect to that contract?

A. I asked Mr. Smith if he had the contract dated or ready; if not, I wished he could date that as of the 12th of January.

Q. This conversation being subsequent to the 12th of January?

A. After the 12th of January, that is right.

Q. And what was Mr. Smith's reply?

A. Mr. Smith's reply says—told me he would.

Q. Did you have any instructions from Mr. Lehaney with respect to any of the phone calls you made to Mr. Smith? A. I did.

Q. And what was that instruction?

A. The instruction was to get Mr. Smith to have that contract drawn up prior to the 15th of January, and get it in the office for my signature.

Q. With respect to the contract in which, as you testified, you suggested to Mr. Smith that he sign a contract dated the 12th of January—

A. (Interposing) That is right.

Q. Was that your idea? [79]

A. That was my own idea.

Q. Now coming to the—well, I'll ask you this: There has been testimony in this proceeding that along perhaps the 15th of January there was a contract signed between the Company and Bay Cities Metal Trades Council. Do you have any knowledge of the signing of such a contract?

A. None whatsoever, no, sir.

(Testimony of James W. Close.)

Q. Did Mr. Lehaney ever tell you that such a contract had been signed? A. He did.

Q. And do you recall approximately when this information was given you?

A. No, I don't recall, Mr. Royster.

Q. Can you place it with respect to the telephone call you made to Mr. Smith asking that he sign a contract dated January 12?

A. No, I can't. The only thing was in discussion at that time was the machinists contract.

Q. Now, directing your attention to the 25th day of January, this year, were you given any instruction on that day with respect to machinists?

A. I was.

Q. And will you tell us what that instruction was?

A. Yes. Mr. Lehaney come back to the office around about 11 o'clock and told me that I would have to get the C. I. O. machinists out of the yard by 11:30, if not, that the Bay Cities Metal Trades would pull the rest of the craft out of the yard.

Q. This was about 11 o'clock A.M. on that date, you say? A. Yes, sir, A.M.

Q. And what did you do, if anything?

A. I done nothing. I let the matter slip until later on in the day, later on in the afternoon.

Q. And later on in the afternoon did you take any action?

A. Yes, I told the machinists, I told Mr. Hostetler that the A. F. of L. had a contract in the yard,

(Testimony of James W. Close.)

and we were to use A. F. L. machinists from that time on.

Q. Did you say anything to Mr. Hostetler about how that would affect his employment?

A. I didn't.

Q. Did you have a conversation with any of the machinists who were working with Mr. Hostetler on that day?

A. Well, there were two or three of them in the bunch, I think, when I walked up to Mr. Hostetler, otherwise no personal conversation.

Q. Do you recall about what time of the day that was on the 25th?

A. Yes, around about 6 o'clock at night.

Trial Examiner Myers: Were these men that you spoke to, or present when you spoke to Hostetler, C. I. O.?

The Witness: That is right, sir.

Trial Examiner Myers: C. I. O. machinists?

The Witness: That is right, sir.

Q. (By Mr. Royster) From January 1—no, strike that. From the time that you began your employment at the location where you're now working, that is, at 501 First Street in Oakland, until 6 P.M. on the evening of January 25, 1945, [81] were any A. F. L. machinists employed there?

A. One. Yes, I beg to correct that. There was one man. He was out of the Auto Mechanics Local for a maintenance man on welding machines.

Q. And about when was that, do you recall?

A. That was in about June of 1944.

(Testimony of James W. Close.)

Q. About ten months ago?

A. That is right, sir.

Trial Examiner Myers: How long did he work for the company?

The Witness: About three months. He had a dual card. He belonged to the Pipe Fitters and also the Auto Mechanics Local.

Q. (By Mr. Royster): What has the practice been during the time of your employment at the location that we have been speaking of, both under Judson and under Graham, up until January 25, 1945, with respect to the hiring of machinists?

Mr. Janigian: Object to the question, insofar as it would relate to the practice prior to the operation of the yard by Graham.

Trial Examiner Myers: Overruled.

A. All C. I. O. machinists, 1304.

Q. Mr. Close, are you familiar with the type and character of vessels that are brought to the yard for repair? A. I am.

Q. Can you tell us—well, for example, a few of the vessels that have been worked on in the past two months?

A. Yes, sir. We have had Liberty ships belonging to Intercoastal and Steamship Company, cargo vessels for all over [82] the world.

Trial Examiner Myers: What Intercoastal Steamship Company?

The Witness: Beg pardon?

Trial Examiner Myers: What Intercoastal Steamship Company?

(Testimony of James W. Close.)

The Witness: It's the Intercoastal Steamship Company, their offices are right here in San Francisco.

Q. (By Mr. Royster) That is the name of the company?

A. That is the name of the company. Then we have at the present time tug boats built by the Maritime Commission, turned over to the War Shipping Administration and being operated by Moran Tug Company, they're used for tows and convoys and towing equipment all over the world. We have the L. S. M. type vessels which are a miniature heavy-landing craft used for tanks and troops, go all over. We have some Navy house barges that are used for quartering personnel on big conversion jobs, which is the bay work around here. Then we have worked on some L. C. I's flotilla command Navy ships going to the war zone. At the present time we have one Great Lakes coal barge, which was taken over by the Navy, which tows cargo all over the world. That about sums it up.

Mr. Royster: I believe that is all.

Trial Examiner Myers: Any questions, Mr. Stimmel?

Cross Examination

Q. (By Mr. Stimmel) Mr. Close, did you at any time post a notice up in the yard that the C.I.O. men would not be [83] employed after the 25th?

A. No, sir.

Q. Did you ever post up a copy of any contract with the A. F. L.?

A. No, sir.

(Testimony of James W. Close.)

Q. In the yard? A. No, sir.

Q. Did you ever tell any man individually that his employment would terminate by reason of his affiliation with any union? A. No, sir.

Mr. Stimmel: That is all.

Trial Examiner Myers: Mr. Janigian?

Cross Examination

Q. (By Mr. Janigian) Mr. Close, you testified that at least two machinists were employed during two pay roll periods between December 19 and January 1st? A. That is right.

Q. That is, December, 1944, and January 1, 1945? A. That is right.

Q. They weren't employed during that entire period, were they, Mr. Close?

A. They were never taken off the pay roll; in other words, they were on the pay roll, but they were on a temporary lay off basis.

Q. That is the point.

A. They were on temporary lay off as were the rest of our employees for the Judson-Pacific War Industries. [84]

Q. But they were doing no work during those two weeks? A. That is right.

Q. And so they were not at the plant working between December 19 and January 1?

A. Not the entire personnel, no.

Q. I'm talking about the machinists.

A. I would have to check my records thoroughly to find out. I can tell you every day that every

(Testimony of James W. Close.)

man was in that plant. There was one or two there off and on.

Q. But these two persons were kept on the pay roll, but were not working during the two-week period? A. During the entirety, yes.

Q. And is it your recollection that during those two weeks between December 19, two weeks or thereabouts, between December 19 and January 1, no machinists were actually working at the plant of the Judson War Industries?

A. On productive work, no; plant maintenance, off and on, yes.

Q. Off and on? A. Yes.

Q. And you don't know whether they worked one day or two days?

A. I couldn't tell you. I'd have to check my records to find out for sure.

Q. Now, were you working for Walter Johnson Company or Judson-Pacific Company?

A. Judson-Pacific War Industries.

Q. And did you ever work for Walter Johnson Company? [85] A. Never.

Q. You were hired by Mr. Graham as of January 1st, is that right? A. That is right.

Q. You were hired first in what capacity?

A. Same capacity I have right now, hull superintendent.

Q. Did you do the hiring?

A. All of it, that is, I didn't do the hiring myself, no, very little of the hiring myself.

(Testimony of James W. Close.)

Q. Well, who put the requisitions to the various unions or other sources for help?

A. Each individual craft foreman.

Q. There is testimony in the record that machinists were first employed on January the 3rd.

A. That is about right.

Q. 1945. A. That is about right.

Q. When were other craftsmen first employed?

A. Around about the same time, might have been one day difference on the rigging crew for tying vessels up.

Q. They would have been on the job one day ahead? A. One day ahead, yes, sir.

Q. And from which source were these other employees obtained, do you know?

A. From which source?

Q. Yes.

Trial Examiner Myers: You mean other than—

Q. Other than machinists.

A. I want to specify that A. F. L or C. I. O. do you have [86] reference to?

Q. That is right.

A. All American Federation of Labor.

Q. They were hired direct from the A. F. L.?

A. From the respective hiring halls, that is right.

Q. And that has been the practice ever since?

A. That is right.

Q. As far as you know?

A. That is right.

Q. Up to the present date?

(Testimony of James W. Close.)

A. To the present date.

Q. Just when were you instructed by Mr. Lehaney and Mr. Graham to sign a contract with 1304 covering machinists?

A. Somewhere around the middle part of the month, I don't recall the exact date.

Trial Examiner Myers: Did Mr. Graham instruct you?

The Witness: Mr. Lehaney first, and I wasn't going to take his word as final. I caught Mr. Graham as he was getting in the car and asked him, and I got the O. K. from Mr. Graham.

Q. (By Mr. Janigian) And you testified that you phoned Mr. Smith and advised him of the fact that you were ready to sign this contract on behalf of the Graham Ship Repair Company?

A. I did, that is right.

Q. And what did Mr. Smith tell you?

A. He said he would bring one down.

Q. And did he bring one down? [87]

A. No, sir.

Q. The next time you saw Mr. Smith was at this conference of about January the 17 or 16, is that right?

A. Somewhere along there, when Walter Johnson and Mr. Graham and myself were present.

Q. And Mr. Lehaney also?

A. That is right.

Q. Did Mr. Smith present a contract at that time?

(Testimony of James W. Close.)

A. At that time, no; not to my knowledge.

Q. Did Mr. Smith come back and offer you this contract, form of contract, at some subsequent time?

A. No, sir.

Mr. Janigian: I think that is all.

Trial Examiner Myers: Any redirect?

Re-Direct Examination

Q. (By Mr. Royster) Just this, your Honor: In hiring men for classifications other than machinists, is it your testimony that these men are hired through the various unions?

A. That is right.

Q. Is there a central hiring hall for Bay City Metal Trades Unions?

A. No, sir.

Q. Also with respect to your testimony concerning the telephone call to Jim Smith, in which you suggested that he bring down a contract and date it the 12th of January, what, in point of time, is the relationship between that telephone conversation and the occasion when you, Mr. Smith, [88] Mr. Johnson, and Mr. Lehaney met in the office at the yard?

A. I would say it was a few days prior to that, the date I don't remember exactly.

Q. The meeting was prior to the telephone conversation?

A. No, the meeting was after the telephone conversation.

Q. Is my recollection correct, that at this meeting Mr. Smith asked Mr. Lehaney to determine what policy he was going to follow?

(Testimony of James W. Close.)

A. On the first meeting, that is right.

Q. Well, you're speaking now of two meetings.

A. We were talking—the question I think you asked was the first meeting we had on the 5th of the month, 5th of January.

Q. Was that a meeting at which Mr. Smith was present?

A. Mr. Smith and Mr. Lehaney and myself were present.

Q. On the 5th of January?

A. Yes, sir, around about that time.

Q. And then followed in sequence several telephone calls to Mr. Smith?

A. That is right.

Q. Culminating with a call where you suggested that he sign a contract dated the 12th?

A. That is right.

Q. And then following that by a day or two was another meeting?

A. That is right.

Q. I don't believe that the conversation at this second meeting has been gotten into the record, and I'll ask Mr. [89] Close now to relate, as well as he can, what took place at this second meeting.

A. There was so much said, that would be pretty hard to recall, and I was unable to stay the entire meeting, so I couldn't absolutely make a statement for sure of the conversation of that meeting.

Q. Do you recall any of the conversation that took place then?

A. Yes, Walter Johnson's conversation, I recall that in particular; that we had been working definitely under a C. I. O. contract, and he was under

(Testimony of James W. Close.)

the impression that that C. I. O. contract would continue with the yard at that time. I do remember that coming out. And then I had to go out on one of the vessels, I don't recall exactly from there on just what did transpire.

Trial Examiner Myers: Any other questions, Gentlemen? Mr. Stimmel?

Mr. Stimmel: No questions. [90]

Re-Cross Examination

Q. (By Mr. Janigian) You said Mr. Walter Johnson said he was under the impression that his contract continued? A. That is right, sir.

Q. Is that the only thing you remember of that conversation?

A. That is about the only thing. There was several people in the office all trying to talk at one time, but I did happen to be standing very close to Mr. Johnson at the time the statement was made in reference to his old contract, and about that time I got a telephone call and had to go down to the yard.

Q. And this Mr. Johnson, you're sure, was talking about his own contract?

A. That is the only contract that I have knowledge of. I think he was.

Mr. Janigian: That is all. [91]

JAMES P. SMITH

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined, and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: James P. Smith.

Trial Examiner Myers: Where do you live, Mr. Smith?

The Witness: 2478 Rawson Street, Oakland.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Royster.

Q. (Mr. Royster) What is your occupation, Mr. Smith?

A. Business representative for Local 1304 machinists.

Q. How long have you been so employed?

A. Since 1936.

Q. And what, in general, are your duties?

A. Organizing and signing contract, negotiating contracts, settling industrial disputes.

Q. How long had Local 1304 existed as a labor organization?

A. It was disfranchised in the A. F. L. July 27th, '36, and remained independent until April the 9th, '37, at which time a C. I. O. charter was installed.

Q. Was it known as Local 1304 when it was affiliated, or when it was a local of the International Association of Machinists? A. No. 284.

(Testimony of James P. Smith.)

Q. Did you hold office in Local 1304 when it was first formed?

A. I was financial secretary and organizer.

Q. Is Local 1304 recognized by a number of employers in Alameda County as exclusive collective bargaining representative of machinists employees?

A. Some fifty odd employers, including ship yards.

Q. Can you name ship yards in Alameda County where machinist employees are required by agreement with your organization to be members of Local 1304?

Mr. Janigian: Object to the question on the ground it's incompetent, irrelevant, and immaterial.

Trial Examiner Myers: What about that, Mr. Royster.

Mr. Royster: Beg pardon?

Trial Examiner Myers: What about it?

Mr. Royster: I believe the question is material, Mr. Examiner, for this reason: That one of the allegations in this complaint is that the machinists constitute a separate, appropriate bargaining unit.

Trial Examiner Myers: I mean, the names of these other companies.

Mr. Royster: Well, it goes to the weight of his testimony.

Trial Examiner Myers: I'll sustain the objection.

Mr. Royster: All right.

(Testimony of James P. Smith.)

Trial Examiner Myers: Is Oakland in Alameda County?

The Witness: Yes, sir.

Q. (By Mr. Royster) Well, is there in operation any ship repair yard in Alameda County, other perhaps than the one involved in this proceeding, where all machinists are not required to be members of Local 1304? [93]

A. Only one with whom we're in negotiations, and that is Bethlehem, however, they must be members of our local, or they don't work there. We still recognize that even without a contract.

Q. Are you acquainted with Walter W. Johnson, who testified this morning? A. Yes, sir.

Q. Have you ever had any business dealings with him, you as representative of Local 1304?

A. Negotiated and signed the first contract with the original yard, Judson War Products.

Q. I show you Board's Exhibit 3(a) for Identification, and ask you if you can identify it?

A. Yes, sir, that is the contract we signed.

Q. What is it?

A. That is the contract we signed.

Q. With whom?

A. Walter W. Johnson, representing Judson-Pacific War Industries.

Q. And about when was that contract signed?

A. August 14th, '42.

Q. And I show you Board's Exhibit 3(b) for identification, and ask you if you can identify that?

A. Yes, sir, that is the Pacific Coast agreement,

(Testimony of James P. Smith.)

which is a part of the master contract signed by —on the same date by Mr. Johnson, representing Judson-Pacific War Industries, and myself representing the union.

Q. Is it your testimony that this document was signed on August 14th, 1942? [94]

A. Yes, sir.

Q. And I show you Board's Exhibit 3(c) for identification, and ask you if you can identify that?

A. Yes, sir, that is the supplement to the repair agreement signed on the same date by Mr. Johnson, representing Judson, and myself representing the union.

Q. And did you testify, was signed on the same date as the other two documents?

A. Same date.

Q. August 14th, 1942?

A. That is right.

Trial Examiner Myers: Are you offering those contracts in evidence?

Mr. Royster: Yes. I offer those in evidence, Mr. Examiner.

Trial Examiner Myers: Any objection?

Mr. Janigian: Yes, I object to it on the ground that these contracts are incompetent, irrelevant and immaterial since the evidence in this case affirmatively shows that the Graham Ship Repair Company is not a successor of the Judson War Industries, Inc., did not agree to assume these collective bargaining agreements, consequently these agreements are wholly immaterial, cannot be said to be

(Testimony of James P. Smith.)

binding upon the Graham Ship Repair Company or upon any union other than 1304.

Trial Examiner Myers: I'll overrule the objections, and receive the papers in evidence, and ask the reporter to please mark them as Board's Exhibit 3(a), (b), and (c) respectively. [95]

(Thereupon the documents heretofore marked Board's Exhibit 3(a), (b) and (c) for identification were received in evidence.)

BOARD'S EXHIBIT No. 3 (a)

MASTER CONTRACT

UNION AGREEMENT

This Agreement, made and entered into this 14th day of August, 1942, by and between Judson Pacific War Industries, hereinafter called "Employer", and East Bay Union of Machinists, Local 1304 of the United Steelworkers of America, affiliated with the Congress of Industrial Organization.

Witnesseth:

1. Scope of Agreement.

This agreement shall apply to all work and activities of the employer in connection with the construction of new vessels on the Pacific Coast in connection with the National Defense Program, including new vessels to be constructed for the U. S. Navy, U. S. Maritime Commission, and for foreign governments with the approval of the United States Government.

(Testimony of James P. Smith.)

A "new vessel" shall be construed to be any newly-constructed floating structure prior to its completion, final acceptance and employment in the service for which it has been constructed. "Construction of new vessels" (as differentiated from repair) shall include substantial rebuilding of a vessel prior to service in order to adapt it to a use different from that for which it was previously planned, and shall not be deemed as repair work until such vessel has made a passenger or cargo-laden voyage.

2. Hiring of Men.

It is hereby agreed that all employees covered by this agreement who come under the jurisdiction of the Machinists Union shall be members of the East Bay Union of Machinists.

The Union agrees, on requisition of the Employer, to furnish competent workmen in the classifications covered by this agreement for the prosecution of the work covered by this agreement. The Employer may refuse to employ and may discharge any employee for any just and sufficient cause.

Union agrees that the workmen to be furnished to the Employer under this agreement shall be willing to, and shall, submit to the making of such records for the purposes of identification as are, or may be, required by the United States Government in connection with the National Defense Program.

Only citizens of the United States need be employed and the Employer shall have the right to require satisfactory evidence of such citizenship.

(Testimony of James P. Smith.)

If, after Employer has placed requisitions for workmen with the Union, signatory hereto, the Union shall fail to supply competent workmen within forty-eight (48) hours thereafter, employer shall be free to hire the necessary workmen when and where it chooses without regard to Union membership; provided, however, that such workmen, so employed, shall be required to secure a clearance card from the Union before starting work.

In the event such workmen fail to make application to the Union within the period of time prescribed by such Union, they shall be replaced by members of the Union when they become available.

* * * *

6. Wage Scales.

Employer agrees to pay to its employees and the union agrees that its members employed by Employer will accept the wage scales for the various classifications set forth and contained in the Schedule of Wages in Exhibit "A" attached hereto; provided, however, that nothing contained in this agreement shall operate to reduce the wages of any employee who is now or who has within six (6) months been employed by Employer; provided, further, that any employee who is transferred from ship repair work to new ship construction work, as herein defined shall receive not less than the wages now being paid by Employer to other employees in the same classification in new ship construction.

The wage scales herein established shall be con-

(Testimony of James P. Smith.)

sidered as minimum scales and shall not prevent the payment of higher wages to premium men.

* * * *

20. Jurisdiction.

The Union agrees that in the event any jurisdictional dispute shall arise between the various trades Unions with respect to the jurisdiction over the work or any classification of employment, whether or not included in the schedule attached hereto, such dispute shall be settled by the Unions without permitting the same to interfere in any way with the progress and prosecution of the work hereunder. Pending the settlement of such disputes, the work shall continue on the same basis as it was being performed at the time the jurisdictional dispute arose, unless the Unions otherwise agree and furnish men to perform the work.

* * * *

22. Duration of Agreement.

All provisions of this agreement shall continue in force and effect during the period of the National Emergency, as proclaimed by the President of the United States, and/or the period of two years, whichever is the longer, and shall continue in force and effect thereafter from year to year unless either party shall desire a change and shall give the other party notice in writing of the proposed changes at least thirty (30) days prior to the expiration of any year; provided, however, that on demand of Labor at the end of the first year's operation under this

(Testimony of James P. Smith.)

agreement, and on demand of either party, every six (6) months thereafter, the wage scales herein agreed to shall be reviewed by the parties. If the cost of living, as shown in the "Index Numbers of Cost of Goods Purchased by Wage Earners and Salaried Workers in Large Cities", published by the United States Bureau of Labor Statistics, United States Department of Labor, shall have changed at the time of the review from the cost of living at the time of the making of this agreement by five per cent (5%) or more, the wage scales shall be correspondingly adjusted.

In the event the necessary data is not obtainable at the date of review, it may be secured at a later date and the wage adjustment shall be made effective retroactively to the date of review.

* * * *

In Witness Whereof, the parties hereto have executed this agreement the day and year first above written.

For the Employer:

JUDSON PACIFIC WAR
INDUSTRIES,
/s/ WALTER W. JOHNSON,
G. M.

For the Union:

JAMES R. SMITH,
B. A. Local 1304.

SCHEDULE "A"

Machinists	\$1.20
Machinists Helpers95

(Testimony of James P. Smith.)

BOARD'S EXHIBIT No. 3 (b)

UNION SHIP REPAIR AGREEMENT

This Agreement, dated April 1, 1942, between Employers signatory hereto and engaged in ship repairs in the San Francisco Area, and the East Bay Union of Machinists, Local 1304 U. S. of A. affiliated with the Congress of Industrial Organizations.

Witnesseth:

1. Scope of Agreement—The terms hereinafter expressed shall be incorporated in contracts to be executed by all Employers parties hereto with the East Bay Union of Machinists Local 1304.

2. Wages—The wage scales for ship repair work on the Pacific Coast are hereby fixed at the scales set forth in Schedule "A" of the Master Contract covering new ship construction, plus 11.6%.

* * * *

4. Duration of Agreements—The duration of the agreements shall be for the period of two years or for the period of the National Emergency as proclaimed by the President of the United States—or which ever is longer, and said agreements shall continue in force and effect thereafter from year to year unless either party shall desire a change in which event, the party desiring the change shall give the other party notice in writing of the proposed change or changes at least thirty days prior to the expiration of such year; it being expressly understood, however, that on the demand of Labor thirty days prior to April 1, 1942, and on demand of either

(Testimony of James P. Smith.)

party every six months thereafter, the wage scales in said agreements shall be reviewed by the parties. If the cost of living, as shown in the "Index Numbers of Costs of Goods Purchased by Wage Earners and Salaried Workers in Large Cities", published by the United States Bureau of Labor Statistics, United States Department of Labor, shall have changed at the time of the review from the cost of living at the time of the making of this agreement by five per cent or more, the wage scales shall be correspondingly adjusted. In the event the necessary data is not obtainable at the date of review, it may be secured at a later date and the wage adjustment shall be made effective retroactively to the date of review.

* * * *

7. It is expressly understood that existing working conditions in the various districts shall continue in force and effect until changes by mutual agreement except as herein specifically otherwise provided.

In Witness Whereof, the parties hereto have hereunto set their respective names through their respective authorized officers or representatives.

For the Employers:

JUDSON PACIFIC WAR
INDUSTRIES,
/s/ WALTER W. JOHNSON,
G. M.

For the Union:

/s/ JAMES B. SMITH,
B. A. Local 1304.

(Testimony of James P. Smith.)

BOARD'S EXHIBIT No. 3 (c)

UNION SUPPLEMENTAL SHIP REPAIR
AGREEMENT

“The following supplemental agreement is in amplification of Section 7 of the Ship Repair Agreement between Employers Signatory thereto engaged in Ship Repairs and the East Bay Union of Machinists, Local 1304, of the U. S. of A., affiliated with the Congress of Industrial Organizations.

By and between Judson Pacific War Industries and East Bay Union of Machinists, Local 1304 of the U. S. of A. affiliated with the Congress of Industrial Organization.

Section No. 1. It is hereby agreed that all employees covered by this agreement who come under the jurisdiction of the Machinists Union shall be members of the East Bay Union of Machinists, Local 1304. If the East Bay Union of Machinists Local 1304 is unable to furnish required help, any employee hired must secure a clearance through the office of the East Bay Union of Machinists Local 1304 before starting to work.

* * * *

Dated 8/14/42.

For the Employer:

JUDSON PACIFIC WAR
INDUSTRIES,
/s/ WALTER W. JOHNSON,
G. M.

(Testimony of James P. Smith.)

For the Union:

/s/ JAMES B. SMITH,
B. A. Local 1304.

SUPPLEMENT AGREEMENT

Covering employment of "Trainees" in the jurisdiction of the East Bay Union of Machinists Local 1304 U. S. of A.

By and between Judson Pacific War Industries, and the East Bay Union of Machinists Local 1304 United Steelworkers of America.

* * * *

Entered into this 14th day August, 1942.

For the Employer:

JUDSON PACIFIC WAR
INDUSTRIES,
/s/ WALTER W. JOHNSON,
G. M.

For the Union:

/s/ JAMES B. SMITH,
Local 1304.

Mr. Royster: Mr. Examiner, these documents are original documents, the only ones in the possession of the union, and I ask permission to substitute copies therefor, and to withdraw the originals.

Trial Examiner Myers: You may substitute copies. Have you got copies?

(Testimony of James P. Smith.)

Mr. Royster: I have them right here.

Q. (By Mr. Royster): Was this contract in effect at the yard now operated by Mr. Graham, the contract to which you have just testified?

A. Was it in effect?

Q. Was it ever in effect at the yard now operated by Mr. Graham? A. That is right.

Q. How long was it in effect there?

A. From the inception of the yard.

Q. Do you know when—I'll strike that. Were you notified that Judson-Pacific War Industries were ceasing operation of the yard now operated by Mr. Graham?

A. Not prior to January 1st.

Q. But you were notified?

A. I learned of it early—about the second or third of January, learned of who was representing the company, Mr. Graham, Mr. Lehaney, Mr. Vogel, obtained the hotels in which they were residing, and finally about 10 or 10:30 one night [96] was able to contact Mr. Graham.

Q. How? A. By telephone.

Q. And about what date was this?

A. Along about the third or fourth, I'd say, of January.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. And what was that conversation?

A. I identified myself over the phone, and Mr. Graham done likewise from his end, stated that we had a contract with the——

(Testimony of James P. Smith.)

Q. (Interposing): You stated this?

A. That is right, that we had a contract with the Judson War Industries, Inc.; that the employees in the plant coming under our jurisdiction were members of our organization, and had been since the inception. And Mr. Graham explained to me that he had hired Mr. Lehaney as their labor relations representative, and urged that I contact Mr. Lehaney, and that he would also notify Mr. Lehaney that I was going to contact him, which I did the following morning.

Q. Well, on the following morning then you say you contacted Mr. Lehaney?

A. That is right.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. Where?

A. In Mr. Close's office first, then we went upstairs in another room and had a conversation between Mr. Lehaney and [97] myself.

Q. And what was that conversation?

Trial Examiner Myers: Which one, upstairs or downstairs?

The Witness: Well downstairs, in Mr. Close's office, was more of an introduction than anything else. We were to discuss what Lehaney's policy was going to be and what our standing was there, and then Mr. Lehaney and I went upstairs in another little office, and he asked me questions about

(Testimony of James P. Smith.)

the situation in Alameda County. I explained it to him thoroughly.

Trial Examiner Myers: Tell us what you said?

Q. (By Mr. Royster): What did you say?

A. About the shipyards over there, including the one that they had taken over, employed exclusively machinists out of our organization with the exception of Bethlehem's new yard, new construction yard, and that had been—I give him a brief history of the background of our organization, our strikes, and so on, and that it resulted in our contracts and also our labor board decisions, directives, and so on down the line that had validated our contracts up to the present time, so that he would understand what the situation was as far as hiring and dispatching of machinists in the shipyards in that area.

Q. Well, after this explanatory discussion, did you make any request of Mr. Lehaney?

A. Made a request for a continuance of our present contract with the Judson Company. He said he would have to take it up with his superiors.

Q. Did he state to you that he lacked authority to conclude an agreement with you? A. No.

Mr. Janigian: Object to counsel leading the witness at every turn.

Trial Examiner Myers: I'll sustain the objection. Don't lead him. What date did you say this was?

The Witness: I'm quite sure it was on the fifth.

Trial Examiner Myers: Of January?

(Testimony of James P. Smith.)

The Witness: Fifth of January.

Q. (By Mr. Royster): Did you receive any communication from Mr. Lehaney after this talk?

A. No, I requested him to get in touch with us when he had the information, and urged him to continue on under the present conditions until such time as he could give me an answer, which he assured me he would, and later on, along about the 15th of January, received a phone call to bring a contract down and back date it to the 12th.

Q. Let's get that a little more in particular. About the 15th of January you state you received a phone call from home?

A. I beg your pardon, get this in: There was two phone calls came in the office, and I was tied up in negotiations just prior to that 15th or 16th call, at which time I talked to Mr. Close.

Q. Well now, the two phone calls came into the office asking for you? A. That is right. [99]

Q. On the 12th, 13th, 14th, somewhere along in there?

A. Somewhere around in there, I'll say the 13th or 14th.

Trial Examiner Myers: But you weren't there?

The Witness: I was in other grievance.

Trial Examiner Myers: But you weren't there?

The Witness: I was not in the office, no, sir.

Trial Examiner Myers: And you didn't talk to anybody?

The Witness: No, sir.

Trial Examiner Myers: The first time you

(Testimony of James P. Smith.)

talked to anybody was around the 16th or 17th of January?

The Witness: Somewheres around the 16th or 17th, yes.

Q. (By Mr. Royster): And to whom did you talk on that occasion? A. Mr. Close.

Q. And what was that conversation?

A. Mr. Close stated to bring a contract down, and that Mr. Lehaney had requested we back date it to January 12th.

Q. And what was your reply?

A. My reply was at first that I would.

Trial Examiner Myers: Tell us the whole conversation?

The Witness: That was about all there was to the conversation.

Trial Examiner Myers: Well, you said, at first you said, "I would." Did you change during that conversation?

The Witness: Yes, I got to thinking it over, that to move into some kind of litigation, I wanted this contract dated—the contract that we have at the present time continued.

Trial Examiner Myers: Neved mind what went on in your [100] mind. What did you say to Close in that conversation?

The Witness: I didn't say any more to Close on that conversation on the telephone, that closed there. I gave you the substance of that conversation.

Trial Examiner Myers: All right, you said you would?

(Testimony of James P. Smith.)

The Witness: That is correct.

Trial Examiner Myers: All right, go ahead.

Q. (By Mr. Royster): Did you have any subsequent conversation with Mr. Close then on the telephone? A. No.

Q. Did you have any subsequent conversation with Mr. Graham with respect to a contract for machinists?

A. Only the meeting that morning with Mr. Graham, Mr. Lehaney, Mr. Johnson, Mr. VanCuren, my associate, Mr. Close was in for awhile, and myself.

Q. And will you give us the date of that meeting? A. It was on or about the 17th.

Q. And with respect to the telephone call from Mr. Close about which you have just testified, did that telephone call precede this meeting?

A. That is right.

Q. Will you tell us first where this meeting was of the 17th?

A. It was in a little side office, I think it's what you might term the yard superintendent's office; it wasn't in the main office, it was off to the side.

Q. The office of the Graham Ship Building Company? A. That is right.

Q. And what was said there? [101]

A. I asked for the signing of a contract, or the continuing of our old contract.

Mr. Janigian: Continuing what?

The Witness: Continuing of our—we assumed we had a contract at the time, continue the contract,

(Testimony of James P. Smith.)

continued the practice that had been followed through up until that time that the machinists be hired through our organization, and I asked if—or Lehaney stated that that couldn't be done, there was a contract signed and I says, "Covering the men in our yard, the men in your yard, who are members of our union?" He said, "That is right." I said, "Well, we're not going to go for any back-door contracts." And he said, "That is a God damned lie." And I said, "No, it's not, the employees in the plant are members of our union, and we're certainly not going to let you pull off a stunt like that, have a contract covering men from some other union, that doesn't cover any man in that jurisdiction in this yard."

Q. (Mr. Royster): Were you shown any contract on this date? A. No.

Q. Did you offer on this date—I'll strike that. Was any further reference made on the date of this meeting and at this meeting with respect to the contract about which you and Mr. Close talked on the telephone?

A. At this meeting Mr. Johnson urged Mr. Graham and Mr. Lehaney to continue on with the contract we had, that the relationship between his company and our organization had been most friendly, and that stepping out of line on that [102] would only create a disturbance because of the fact that the yards on the estuary were all—all machinists were hired through our organization, and Mr. Graham at that time requested to take it under ad-

(Testimony of James P. Smith.)

visement, and meantime the people were to be hired through our union.

Q. Did you make a subsequent visit to Mr. Graham's yard?

A. Yes, I was down there a couple of times in the yard, just not for a meeting, but just to see how things were going.

Q. Were you there on January 25, 1945?

A. Yes, sir.

Q. And what occasioned your visit on that date?

A. I received a phone call around about six o'clock that afternoon that the A.F.L. were bringing machinists in to take over the swing shift at seven o'clock that night.

Q. From whom did you receive this phone call?

A. It started in the yard.

Q. What is his name? A. Shaffer.

Q. And as a result of this phone call what did you do?

A. Hopped in the car, and immediately went to the yard.

Q. And upon arrival at the yard what did you do?

A. Went into Mr. Lehaney's office and told him——

Trial Examiner Myers: Who did you see?

A. Mr. Lehaney's office, told him I understood he was bringing A.F.L. machinists in, and he says, "That is right." And I said, "Well, you know that is contrary to the situation we're working under." And he says, "Well, your men are out." And I

(Testimony of James P. Smith.)

said, "Have you any [103] objections to me going out in the yard to so inform my members?" And he said, "None whatsoever, go ahead."

Q. (By Mr. Royster): Was there any further conversation at that time between you and Mr. Lehaney? A. No, sir.

Q. And what did you do?

A. Went out in the yard and told the fellows that the A.F.L. was taking over the yard at seven o'clock that night, and that they would require them either lining up in the A.F.L. or being replaced, because the company stated they were out.

Trial Examiner Myers: Will the reporter please read it?

(The answer referred to was read by the reporter.)

Q. (By Mr. Royster): When you were talking with Mr. Lehaney on this occasion, to what group of employees did you have reference, what group of employees were you talking about?

A. The machinists and helpers employed in the yard.

Q. Since that date have you had any conversation with Mr. Lehaney? A. No, sir.

Q. Have you had any conversation with Mr. Graham? A. Yes, sir.

Q. Can you tell us approximately when?

A. I had a conversation with Mr. Graham a few days after. [104]

Q. Where? A. Beg pardon?

Q. Where?

(Testimony of James P. Smith.)

A. The the Coit Hotel, in Oakland.

Q. Was any one present other than you and Mr. Graham? A. No, sir.

Q. And what was the conversation?

A. The conversation was that Mr. Graham wanted to go into this situation, he was sorry it had come up, he wanted advice as to what legal procedure would have to take place in order to settle the controversy along those lines.

Q. Have you ever made a request for reinstatement of the C.I.O. machinists, whose employment was terminated on January 25th?

A. Yes, sir, to Mr. Graham at that time requesting the continuance of our contract or new contract, reinstating our employees, or our members rather.

Q. Since January 25, 1945, have any members of Local 1304 been employed at the Graham Shipyard? A. No, sir.

Trial Examiner Myers: You say this conversation took place a couple of days after the 25th?

A. Three or four days after the 25th.

Trial Examiner Myers: Have you spoken to Mr. Graham since then?

The Witness: Yes, once since then.

Trial Examiner Myers: When was that?

The Witness: Probably a week after that. [105]

Q. (By Mr. Royster): And what was the conversation then?

A. The conversation was that Mr. Graham wanted straightened out, that he felt that it would have to go to some appropriate government agency,

(Testimony of James P. Smith.)

and that is when we filed the charges with the N.L.R.B.

Q. Did you ask him about reinstatement?

A. Well, probably in the discussion that was brought up, not officially asked, it had already been requested two or three different times.

Q. When were the two or three different times?

A. I stated there that on the meeting approximately the 17th, again on the 25th, the first conversation with Mr. Graham, and probably the second.

Q. I said reinstatement, they didn't go out, or they wasn't discharged, or whatever you want to call it, until the 25th?

A. That is right, reinstating our members.

Q. When did you have that conversation?

A. In the first meeting with Mr. Graham, and probably the second.

Q. The second reinstatement to their jobs, I'm talking about.

A. Well, I'm answering you that it probably came up in the conversation with Mr. Graham in both instances. I know it did the first time and probably the second.

Q. You mean a couple of days after January 25th, is that what you mean?

A. I said three or four days after January 25th, the first meeting, and probably a week or ten days on the second one. [106]

Q. All right, did you ask him on February 14th and February 18th, 1945?

A. Yes, there was another meeting—I wouldn't

(Testimony of James P. Smith.)

say the exact dates. I had another meeting with Mr. Graham, and we discussed the case coming before the National Labor Relations Board on the filing of the charge, and in all probability that was discussed at that time, but I don't recall the exact conversation.

Q. (By Mr. Royster): Did you have a meeting with Mr. Graham on February 14th?

A. Around about that date.

Q. Was any one present other than you and Mr. Graham?

A. Yes, Mr. Van Curen was there.

Q. Did you on that date request that C.I.O. members, who had lost their employment on January 25, 1945, be reinstated to their positions?

A. That is right.

Q. Is your answer yes?

A. Yes. Mr. Graham stated that he had to let it go through the channels of the constituted government agency.

Q. Are you familiar with the records of Local 1304?

A. Yes, sir.

Q. In whose charge are they? [107]

A. Well, there are several officers. I happen to be in charge of the office, but they have a financial secretary and treasurer and president, and so on.

Q. Are you in charge of the—you stated you were in charge of the office?

A. That is right.

Q. Does that include charge of the records?

A. Yes, sir.

(Testimony of James P. Smith.)

Q. I'll show you this paper and ask you if you can identify it?

A. Yes, sir, that is our index cards that we have for the record of each individual member who is now or has been a member of our organization.

Q. What is the significance of the entries thereon?

A. Those are the number of months paid on the dates, and the amount paid for the month, and the page number on the day sheet.

Q. By the amount paid, amount of what?

A. Dues per month recorded right here, for machinists, \$2.00.

Mr. Royster: Will the reporter mark these cards as Board's Exhibit 5(a), (b), (c) and (d), and following?

(Thereupon the documents above referred to were marked Board's Exhibit 5(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n) for identification.) [108]

Cross Examination

Q. (By Mr. Stimmel): Mr. Smith, after you told Mr. Close that you would bring a contract down to him, did you ever prepare a contract?

A. Yes, sir, I had it in my pocket at that meeting on or about the 17th that we described, when Mr. Graham, Mr. Lehaney, and Mr. Johnson were present.

Q. At that time did they ask you for the contract? A. No, sir.

(Testimony of James P. Smith.)

Q. Did you tell them at the time you had a contract ready? A. That is right. [115]

Q. Did you offer to deliver it to them with your signature?

A. It was in my pocket ready for signature.

Q. Did you offer it to them in response to their prior inquiry?

A. Yes, I submitted that I had the contract and was prepared to sign it.

Q. Who did you offer it to?

A. Well, the company which was represented by Mr. Lehaney and Mr. Graham.

Q. Did you offer it to Mr. Lehaney, or did you offer it to Mr. Graham?

A. I didn't come out and say, "Here, Mr. Graham, is the contract." I said, "We have a contract prepared to sign."

Trial Examiner Myers: Did you offer it to somebody?

The Witness: To the two representatives of the company.

Trial Examiner Myers: You had the paper in your hand?

The Witness: I had it rolled up in my pocket. I said, "Here is the contract ready to sign."

Q. (By Mr. Stimmel): Where was the contract, in your pocket or in your hand, when you made the offer?

A. I pulled it out and put it back again when it was turned down.

Q. Who turned it down?

(Testimony of James P. Smith.)

A. Mr. Graham said that he wanted time to go into it further.

Mr. Stimmel: That is all.

Cross Examination

Q. (By Mr. Janigian): Mr. Smith, when you had this [116] conversation with Mr. Graham some time in February, of this year, with respect to reinstatement, did you or did you not tell him that your members would not return to work and work with A.F.L. machinists?

A. I couldn't have told him that because——

Trial Examiner Myers: Will you please answer the question.

Q. (By Mr. Janigian): Did you?

A. No.

Q. Now, at any of these—during the course of any of these conversations did you express a willingness to have your men return to their former employment and work along with the other machinists, who were working there? A. No.

Q. Isn't it a fact, Mr. Smith, that you called the strike among the machinists on the 25th day of January, 1945? A. That is not correct.

Q. Was there a strike called by any of the men?

A. No, they were told that they were out. I conveyed the information to them from Mr. Lehaney.

Q. Well, it's not a fact then there exists or has existed at any time since January 25 a strike among your members at the Graham Ship Repair Yard?

A. If we'd had a strike, we'd have put a picket line up.

(Testimony of James P. Smith.)

Q. Your information is then, there is no strike and has never been a strike? A. No. [117]

Cross Examination

Q. (By Mr. Stimmel): Mr. Smith, at that meeting, when Mr. Graham and Mr. Lehaney was present, did you show them this contract you had in your pocket?

A. It was rolled, I had an elastic around it, it wasn't unrolled, around it.

Q. Did you take it out of your pocket and say, "This is a [118] labor contract"?

A. Yes, I said, "I have a contract here ready to sign," and put it back in my pocket. That was the end of it.

Mr. Stimmel: That is all.

Trial Examiner Myers: Mr. Janigian?

Mr. Janigian: No questions.

JAMES W. CLOSE—(Recalled)

Redirect Examination

Q. (By Mr. Royster): After January 25, 1945, Mr. Close, were you present when a conversation took place between Mr. Graham and Mr. Smith?

A. Yes, I was there at a portion of one of the conversations.

Q. And can you relate to us what that portion was that you heard?

Mr. Janigian: What date was this again?

Mr. Royster: All I said is subsequent to Jan-

(Testimony of James W. Close.)

uary 25th, but perhaps he can give it to us more exactly.

A. The specific date, I can't give you any specific date. [119] I just come in on a conversation, I was asked in for a few minutes, but the whole gist of the conversation was this contract again. Mr. Smith insisted that he wanted he wanted his men back in the yard, reinstated back in the yard, and a contract signed, and the men would come back to work.

Q. Did you hear Mr. Graham make a reply to that; do you recall such a reply?

A. Yes; Mr. Graham said that he wanted more time, to take the matter under advisement, think the matter over.

Mr. Royster: That is all.

Trial Examiner Myers: Could you fix the time a little better than you have?

The Witness: Well, it would be pretty hard, sir, to fix the exact time.

Trial Examiner Myers: Yes. Well, the approximate time, a week or two weeks, or a couple of days, or a month?

The Witness: I would say maybe a week or so after that 17th of January meeting, along there somewhere, a week or ten days.

Q. (By Mr. Royster): Was it before or after the time when the C.I.O. machinists' employment was terminated?

A. No, it was after the termination.

Trial Examiner Myers: How long after?

(Testimony of James W. Close.)

The Witness: Four or five days after the termination.

Trial Examiner Myers: All right.

Mr. Royster: That is all.

Trial Examiner Myers: Any questions, gentlemen?

Recross Examination

Q. (By Mr. Stimmel): Mr. Close, when this conversation took [120] place with regard to the reinstatement of the men, was anything said at that discussion with regard to the men being reinstated if the contract was signed?

A. I didn't quite get that clear, Mr. Stimmel.

Q. When this conversation took place after the 25th between yourself and Mr. Smith, with regard to the men who had left the employ of the machinists, who had left the employ being reinstated, was any conversation had between you and Mr. Smith with regard to the men being reinstated as if and when a contract was signed with the C.I.O. union?

A. Not that I recall, Mr. Stimmel.

Q. There was no discussion whatsoever on that point?

A. Not that I recall, sir.

Mr. Stimmel: That is all.

Recross Examination

Q. (By Mr. Janigian): Mr. Close, you testified just two minutes ago that Mr. Smith insisted upon the men being reinstated and a contract being signed, isn't that right?

A. That is right.

Q. And he did so advise Mr. Graham, didn't he,

(Testimony of James W. Close.)

that he wanted the men reinstated and the contract signed? A. That is right.

Q. What did he say with respect to the conditions under which the men would return to work?

A. It seemed like that was the only condition, there was the reinstatement of the contract being signed was the condition the men would return to work.

Q. The condition would be the signing of the contract? [121] A. That is right, sir.

Mr. Royster: Mr. Examiner, I have to offer in evidence, by stipulation among the parties, as Board's Exhibit No. 6 a pay roll of machinists on January 2, 5 and 25, 1945.

Trial Examiner Myers: What do you want the stipulation to cover?

Mr. Royster: It's stipulated among the parties that Board's Exhibit 6 is a correct record of machinists in the employ of the Respondent on the dates shown on the exhibit.

Trial Examiner Myers: Do you so stipulate, Mr. Stimmel?

Mr. Stimmel: We do

Trial Examiner Myers: And you, Mr. Janigian?

Mr. Janigian: Yes, so stipulated.

Trial Examiner Myers: And you, Mr. Royster?

Mr. Royster: I do.

(Thereupon the document above referred to was marked Board's Exhibit 6 for identification.)

(Testimony of James W. Close.)

Trial Examiner Myers: Now you offer the paper in evidence?

Mr. Royster: I offer the paper in evidence.

Trial Examiner Myers: Any objection to the paper going [122] in evidence, gentlemen?

Mr. Stimmel: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I'll ask the reporter to please mark it as Board's Exhibit 6.

(Thereupon the document heretofore marked Board's Exhibit 6 for identification was received in evidence.)

BOARD'S EXHIBIT No. 6

MACHINIST

Jan. 2, 1945: None.

Jan. 5, 1945—Day Shift: E. Ashcraft, Machinist; E. P. Hostetler, Machinist Leaderman; J. Potter, Machinist.

Jan. 25, 1945—Day Shift: E. Ashcraft, Machinist; G. Berness, Machinist; B. Clark, Machinist; J. Clark, Machinist; E. Hostetler, Machinist Leaderman; C. B. Lewis, Machinist; J. Potter, Machinist; R. Renner, Machinist Leaderman; F. Schaeffer, Machinist; W. Shearing, Machinist; A. Sequeirra, Machinist Helper; T. Wright, Machinist. Swing Shift: J. Hopper, Machinist; John Ross, Machinist; G. Taylor, Machinist.

Mr. Royster: Mr. Hostetler.

ELMOTH HOSTETLER,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Elmoth Hostetler.

Trial Examiner Myers: And where do you live, sir?

The Witness: 3514—14th Avenue, Oakland.

Trial Examiner Myers: You may be seated, sir. And you may proceed, Mr. Royster.

Q. (By Mr. Royster): What is your occupation?

A. Machinist.

Q. And who is your employer?

A. Hurley Marine Works.

Q. How long have you been employed there?

A. Since February 8th.

Q. Of this year? A. 1945. [123]

Q. Were you ever employed by Judson-Pacific War Industries, Inc.? A. Yes, sir.

Q. When did you begin that employment?

A. June 1st.

Q. Of what year? A. 1944.

Q. And where?

A. At yard No. 2, at 501 First Street, Oakland.

Q. What was your classification?

A. I was classed as a leaderman and assistant—also as acting foreman.

(Testimony of Elmoth Hostetler.)

Q. Over—— A. All machinists.

Q. Machinists? A. Yes.

Q. When did your employment with Judson terminate?

A. Well, so far as I know it terminated the 25th of—either the 25th or 26th of January.

Q. Of what year? A. 1945.

Q. Have you ever been employed by Mr. Graham? A. Yes, sir.

Q. And over what period was that employment?

A. Well, in that same period of time there.

Q. Well——

Trial Examiner Myers: Who paid you?

The Witness: His checks started paying me the 1st of [124] January, 1945, the first check I drew with Mr. Graham's signature on it was January 7, 1945.

Q. (By Mr. Royster): And what period did that cover?

A. That covered from the 1st of January to the 7th of January.

Q. Now, the period from December 25, 1944, through December 31, 1944, were you employed?

A. Yes, sir, I was employed.

Q. And did you perform any work during that period? A. Yes, sir, I performed work.

Q. Where were you employed?

A. I was employed at the Judson Shipyard.

Q. And how many days did you work in that period?

A. Well, I worked practically all the time with

(Testimony of Elmoth Hostetler.)

the exceptions of probably, oh, a few days when we were off temporarily a few days, I can't say just exact number.

Q. Did you ever receive a release from your employment of Judson-Pacific War Industries?

A. No, sir, I received no release at all.

Q. Was there any change in your wage rate reflected in the check you got from Graham's as compared with the checks you got from Pacific War Industries, Inc.?

A. No, sir, just the same.

Q. As an employee of Judson-Pacific War Industries did you have a clock number?

A. Yes, sir.

Q. Did you have a badge?

A. Yes, sir.

Q. Did your clock number change after January 1?

A. No, sir, stayed just the same.

Q. Did your badge change in any respect?

A. No, sir, just the same.

Q. This is after January, 1945. Are you a member of any labor organization?

A. C.I.O. 1304.

Q. Do you know the full name of that organization? Do you know whether or not that is the charging union in this case?

A. I don't get the question.

Trial Examiner Myers: Have you got any card showing that you're a member?

The Witness: Oh, yes.

Trial Examiner Myers: Will you look at it and see what it says?

(Testimony of Elmoth Hostetler.)

The Witness: I don't think I have it with me. I carry it in my tool box.

Trial Examiner Myers: East Bay Union of Machinists, Local 1304 C.I.O.?

The Witness: That is right, sir.

Q. (By Mr. Royster): When did you join that organization?

A. June 1st.

Q. Of what year? A. 1944.

Q. Have you maintained your membership?

A. Yes, sir.

Q. Since joining? [126] A. Yes, sir.

Q. At any time since June 1st, 1944, have you been in bad standing with Local 1304?

A. No, sir, I'm paid up.

Q. I'll show you Board's Exhibit 5(1) for identification, and ask you if that correctly portrays certain of your dealings with Local 1304?

A. Yes, sir, that is just exactly right.

Trial Examiner Myers: Were you a member in good standing during the month of January, 1945?

The Witness: Yes, sir.

Mr. Royster: I'll offer Board's Exhibit 5(1) in evidence.

Trial Examiner Myers: Any objection, Gentlemen?

Mr. Stimmel: No objection.

Trial Examiner Myers: There being no objection, the card is received in evidence, and I'll ask the reporter to please mark it as Board's Exhibit 5(1).

(Testimony of Elmoth Hostetler.)

(Thereupon the document heretofore marked Board's Exhibit 5(1) for identification was received in evidence.)

BOARD'S EXHIBIT No. 5(1)

No. 21807

E. P. HOSTETLER,
1504 MacArthur Blvd.
Oakland, Calif.

Mach.

Month	Date Paid	1944	Dues	Date Paid	1945	Dues
		Card Issued			Card Issued	
Jan.				1/5/45	5496	\$2.00
Feb.				1/5/45	5496	2.00
Mar. (Judson Pac.)				1/5/45	5496	2.00
Apr.						
May	6/ 2/44	4963	\$12.50			
June	6/15/44	5002	I			
July	7/17/44	5093	2.00			
Aug.	7/17/44	5093	2.00			
Sept.	7/17/44	5093	2.00			
Oct.	10/23/44	5337	2.00			
Nov.	10/23/44	5337	2.00			
Dec.	10/23/44	5337	2.00			

Q. (By Mr. Royster): Do you know Daniel C. Wall?

A. Yes, sir.

Q. Was he ever hired to work for Graham, if you know? A. Yes, sir, I hired him in.

Q. In what capacity did you hire him?

A. Machinist.

Q. When did you hire him? [127]

(Testimony of Elmoth Hostetler.)

A. I hired him the day before they closed as out there, the 24th I guess it would be.

Q. 24th of January, 1945? A. Yes, 1945.

Q. Do you have any independent recollection of whether or not he actually performed work for Graham?

A. No, he was coming in that particular morning.

Trial Examiner Myers: You mean the 25th?

The Witness: The 25th, yes, sir.

Trial Examiner Myers: Did he show up for work?

The Witness: No, the 26th. He was hired in the morning of the 25th and was coming in the 26th.

Q. (By Mr. Royster): Do you know whether or not he belonged to any labor organization?

A. I think he belonged to the C.I.O., I'm sure he did, because he had to get cleared out up there.

Q. Well, you think he belonged to Local 1304?

A. Yes, he had to have a clearance, which he did have when he came in.

Q. Well, did you see any such clearance?

A. Yes.

Trial Examiner Myers: Why bother with this man, he wasn't an employee of Graham?

Mr. Royster: Who wasn't?

Trial Examiner Myers: Wall.

Mr. Royster: Well, it's the contention of the Board that he was, he was hired to work for Graham.

Trial Examiner Myers: He was hired, but he didn't work. [128]

(Testimony of Elmoth Hostetler.)

Mr. Royster: He may never have performed any work, but he was hired.

The Witness: Yes, he was hired.

Mr. Royster: That is the testimony. Now, my last question of the witness, I believe was, did you see any clearance for Local 1304?

A. Yes, he had a clearance.

Q. Permitting Wall to go to work for Graham?

A. Yes.

Q. I'll show you Board's Exhibit No. 7—will you mark this Board's Exhibit No. 7 for identification?

(Thereupon the document above referred to was marked Board's Exhibit 7 for identification.)

Q. I'll show you Board's Exhibit No. 7 for identification and ask you if you have seen that before?

A. Yes, sir, that is his clearance, that is so he could get a job.

Q. Is that the clearance that he exhibited to you?

A. Yes, sir, that is the one he showed to me, also showed through the main office.

Mr. Royster: After the parties have examined that, I wish to offer it in evidence.

Trial Examiner Myers: Any objection, Gentlemen?

Mr. Janigian: No objection.

Mr. Stimmel: No objection.

Trial Examiner Myers: There being no objec-

(Testimony of Elmoth Hostetler.)

tion, the paper is received in evidence, and I'll ask the reporter to please mark it Board's Exhibit 7.

(Thereupon the document above heretofore marked Board's Exhibit 7 for identification was received in evidence.)

BOARD'S EXHIBIT No. 7

Card, dated January 25, 1945, duly issued by the East Bay Union of Machinists to Daniel C. Wall, clearing the individual for employment as helper at Judson-Pacific War Industries.

Mr. Royster: Again I'll have to supply a copy, Mr. Graham.

Trial Examiner Myers: Very well. You mean a duplicate?

Mr. Royster: A duplicate, yes, sir.

Q. (By Mr. Royster): Do you know Willis S. Whatley?

A. Yes, sir.

Q. Was he ever hired to work for Graham?

A. Yes, sir, I hired him.

Q. In what capacity? A. As a machinist.

Q. When did you hire him?

A. On the 25th of January, 1945.

Q. Did he ever perform any work for Graham?

A. No, he was coming in the next morning also.

Q. He was due to come to work?

(Testimony of Elmo Hostetler.)

A. The 26th.

Q. The 26th? A. Yes.

Q. Do you know whether or not he was a member of any labor organization?

A. He was also a member of 1304.

Q. How do you know that?

A. Because that was one of the requirements he had to be, and I saw his clearance slip.

Q. Well, are you testifying that you saw a clearance slip from Local 1304? [130]

A. 1304, yes, sir.

Q. Permitting Whatley to go to work?

A. That is right.

Mr. Royster: Will you mark this as Board's Exhibit 8 for identification?

(Thereupon the document above referred to was marked Board's Exhibit 8 for identification.)

Q. I show you Board's Exhibit 8 for identification, and ask you if you have seen that writing before? A. Yes, sir.

Q. On what occasion?

A. This is Willis H. Whatley hired as machinist.

Q. Where did you see that paper?

A. He brought it out to the yard.

Q. Whatley did?

A. Whatley, yes, sir.

Mr. Royster: I wish to offer that in evidence, Mr. Examiner, that is Board's Exhibit 8, as soon

(Testimony of Elmoth Hostetler.)
as the parties have completed their examination of it.

Trial Examiner Myers: Any objection, gentlemen?

Mr. Stimmel: These clearances seem to run to the Judson-Pacific War Industries and not to the Graham Ship Repair Company.

Mr. Janigian: We'll object to it on that ground.

Mr. Stimmel: The objection is made on that ground.

Trial Examiner Myers: The objection is overruled, and the paper is received in evidence, and I'll ask the reporter to please mark it as Board's Exhibit 8. [131]

(Thereupon the document heretofore marked Board's Exhibit 8 for identification was received in evidence.)

BOARD'S EXHIBIT No. 8

Card, dated January 25, 1945, duly issued by the East Bay Union of Machinists to Willis H. Whatley, clearing the individual for employment as helper at Judson-Pacific War Industries.

Mr. Royster: I'll furnish a duplicate of that in the morning, Mr. Examiner.

Trial Examiner Myers: Very well, sir.

Q. (By Mr. Royster): Do you know Lloyd M. Lee?
A. Yes, sir.

(Testimony of Elmoth Hostetler.)

Q. Was he ever hired to work for Graham?

A. Yes, sir, he was hired to work for Graham.

Q. In what capacity?

A. As a machinist.

Q. When? A. January 25, 1945.

Q. Who hired him? A. I hired him.

Q. Do you know whether or not he was a member of any labor organization?

A. Yes, sir, he was a member of the C. I. O. 1304.

Q. How do you know that?

A. Because he brought his clearance down from the local.

Mr. Royster: Will you mark this as Board's Exhibit 9 for identification?

(Thereupon the document above referred to was marked Board's Exhibit 9 for identification.)

Q. I show you Board's Exhibit 9 for identification. Have you seen that writing before?

A. Yes, sir.

Q. On what occasion? [132]

A. When Lloyd M. Lee brought it in for employment.

Mr. Royster: I offer this in evidence after the parties have had opportunity to examine it.

Mr. Stimmel: Objected to for the same reason, and for the further reason that he never had admission to get into the yard, never reported for work, never did any work for Graham.

Mr. Royster: That is in the nature of testimony, Mr. Examiner.

(Testimony of Elmoth Hostetler.)

Trial Examiner Myers: The objection is overruled. Have you any objection, Mr. Janigian?

Mr. Janigian: No objection.

Trial Examiner Myers: The paper is received in evidence, and I'll ask the reporter to please mark it as Board's Exhibit No. 9.

(Thereupon the document heretofore marked Board's Exhibit 9 for identification was received in evidence.)

BOARD'S EXHIBIT No. 9

Card, dated January 25, 1945, duly issued by the East Bay Union of Machinists to Lloyd M. Lee, clearing the individual for employment as helper at Judson-Pacific War Industries.

Mr. Royster: I will supply a duplicate of that in the morning.

Trial Examiner Myers: Very well.

Q. (By Mr. Royster): Did Mr. Lloyd M. Lee ever perform work for Graham, to your knowledge? A. No, sir.

Q. Mr. Hostetler, is there a sign on the premises of Graham Ship Repair Company, at the entrance?

A. There used to be a Judson sign there. Whether or not they have replaced that, I couldn't say. I know there was a Judson sign there. [133]

(Testimony of Elmoth Hostetler.)

Q. Do you recall any—did you work on January 25, 1945? A. Yes, sir.

Q. Will you tell us what took place in the afternoon of that date?

A. Well, I suppose you have reference to these A. F. L. men coming in and asking me for employment? They said they had been sent down there to go to work. I asked to see their clearances, and they were from the A. F. L. Local. I told them I had no authority whatsoever to hire them, as we weren't hiring anything but C. I. O. members from Local 1304. They told me different, they says, "Well, we're going to be hired today, because we're taking over the yard." I says, "That is news to me, I don't know anything about that." They said, "Well, there is our state representative and national representative standing over there talking to Mr. Lehaney." This gentleman back here was one of them, they called the state representative, and Mr. Ross was supposed to be their national representative, and——

Trial Examiner Myers: You mean of the A. F. L.?

The Witness: Of the A. F. L. Local 264 I believe it is. And I told them I couldn't do anything for them at that particular moment. Our assistant superintendent came by——

Trial Examiner Myers (Interposing): What is his name?

The Witness: Al Rogers. I told Al I had a problem there for him. I said, "What is the score?"

(Testimony of Elmoth Hostetler.)

He said, "Well," he says, "I guess your finished." I says, "What do [134] you mean?" He says, "Well, A. F. L. is taking over, you boys are done."

Trial Examiner Myers: Rogers said that?

The Witness: That is what Rogers told me, and that is the first that I knew of it.

Q. (By Mr. Royster): Well, after getting this advice from Mr. Rogers, what did you do?

A. I immediately notified all the boys what had taken place.

Trial Examiner Myers: What do you mean by "all the boys"?

The Witness: Well, all the machinists, what had taken place, what Mr. Rogers had told me. And I asked one of the boys if they would notify Mr. Smith of what had taken place, and he said he would, and that is about the sum and substance of it.

Trial Examiner Myers: What time of the day was this?

The Witness: This happened to be along about five o'clock in the afternoon.

Q. (By Mr. Royster): Was there any one else present when you had this conversation with Mr. Rogers, other than you and Mr. Rogers?

A. Yes, there were two machinists from the A. F. L. organization that had come in, that I had been talking with, that were going to work.

Trial Examiner Myers: Did they go to work that afternoon?

(Testimony of Elmoth Hostetler.)

The Witness: Yes, they went to work that evening along with another man who was supposed to take over the night job. [135]

Q. (By Mr. Royster): Did you ever know the names of those two A. F. L. applicants?

A. No, I don't think I know their names. I think they told me their names. I happened to know Mr. Ross, because I had worked with him on numbers of jobs and I knew him quite well.

Q. Have you requested reinstatement to your job?

A. Well, only through my business agent, Mr. Smith.

Q. Did you present yourself at the Graham yard on the morning of January 26th?

A. Yes, sir.

Q. For employment? A. Yes, sir, I did.

Q. And will you tell us what, if anything, happened?

A. Well, I went down there merely as a favor to them, they asked me to come down.

Trial Examiner Myers: Who?

The Witness: Mr. Rogers and Mr. Close, due to the fact that they had quite a lot of work in there at that particular time and there was a lot of work that was partly done and just starting to be done, and so on, and so forth, and they didn't know a great deal just what had to be done, that is they knew some, but not all of it. And I went down to kind of straighten them out, stayed down there all morning. Mr. Smith gave me authority to go

(Testimony of Elmoth Hostetler.)

down there and kind of straighten them out on the work, show them what had been done and what hadn't been done and what was in the process of being done. [136]

Q. On these men that you testified to hiring, on the 25th or the 26th, did you see those men on the premises on the 26th when they reported for work, or did they report for work?

A. The 26th, no, I didn't see them on the premises on the 26th, because we notified them the 25th, we got ahold of them before they came to work.

Q. So they never showed up?

A. No, they were never there.

Q. They never were admitted on the premises?

A. Yes, they were admitted on the 25th, they came in and hired in.

Q. You hired them on the premises?

A. That is right, but so far as actual working, they never worked.

Mr. Stimmel: That is all.

Trial Examiner Myers: Mr. Janigian?

Cross Examination

By Mr. Janigian:

Q. Mr. Hostetler, with respect to the last two weeks in December, you said you were working on the premises of the Judson-Pacific Shipyards?

A. Yes, sir.

Q. Which is now occupied by the Graham Ship Repair Company? A. That is right, sir.

Q. Now, all work on vessel construction or repair was stopped about December the 19th?

(Testimony of Elmoth Hostetler.)

A. That is right.

Q. Is that right? A. That is right.

Q. What work were you doing?

A. Maintenance work.

Q. What were you maintaining?

A. Well, there was a number of things around there that had to be kept up, little odd jobs here and there, the cranes, and such as that. We kept up a lot of that stuff.

Q. You were being paid by whom?

A. By Judson-Pacific Company.

Q. Judson-Pacific War Industries?

A. That is right.

Q. And how many other machinists were employed there?

A. I had two others with me at the time.

Q. But the last two weeks you did not work full time, did you?

A. No, I can't say that we worked—I think we were off a few days there, I know I voluntarily took a few days off, because it was around Christmas time.

Q. Isn't it a fact that you took these few days off between Christmas and New Years?

A. I don't remember just when it was. I'm sure it was [138] Christmas, though, was one of the days along about that time, it was either before or afterwards, I could check up easy and find out.

Q. You don't happen to have the stubs.

A. I have some of the stubs, but didn't bring that particular one. In fact, Judson didn't pro-

(Testimony of Elmoth Hostetler.)

duce stubs. I'd have to check it up on something different.

Q. They didn't give you any stubs, though?

A. We didn't have stubs with Judson.

Q. I see. Now, then, you knew that the plant was being sold to the Graham Ship Repair Company, or to Mr. Graham?

A. Truthfully I didn't know it.

Q. You didn't know it? A. That is right.

Q. Now, how did you happen to go to work on January the 3rd, of this year?

A. I was already working, it was my job there. I had never terminated services there, my service was still going on there, so far as I knew.

Q. Why did you go to work on January the 1st?

A. January 1st, well it happened to be that I was off those few days.

Q. Who told you, who paid you off?

A. The superintendent of the yard.

Q. And who was he? A. Mr. Close.

Q. Mr. Close? A. That is right. [139]

Q. He laid you off how many days before January 1st, about?

A. I can't recall the exact number of days.

Q. Several days before, though?

A. Well, it was a few days, I wouldn't say several days, I wasn't off too much.

Q. A few days? A. That is right.

Q. Could it be a week? A. Possibly, yes.

(Testimony of Elmoth Hostetler.)

Q. Did he give you any reason for laying you off?

A. None at all. I could have stayed right on if I'd have wanted to stay on.

Q. But he did lay you off, though?

A. Yes, he asked me if I wanted to take a few days off, and I took it off.

Q. I see. He didn't give you a quit slip?

A. Pardon?

Q. He didn't give you a quit slip?

A. Oh, no, no, no.

Q. Now then, did he tell you when to return?

A. Well, I kept going back to the yards there.

Q. Well, it's a fact, isn't it, that after January the 1st, you reported at the yard to see if there was work?

A. Well, they generally kept in contact with me. They'd call me up if they wanted me to come down, if they had anything to do. That was the agreement between Mr. Close and myself.

Q. Well, what happened on this occasion. You have said a [140] minute ago that you want back to the yard before January the 3rd.

A. Well, I'd go back there occasionally to see what was doing.

Q. You'd drop by? A. That is right.

Q. And did you drop by about the 3rd of January to see what was doing?

A. No, they called us up the 2nd, I think it was, and told us that they were typing up some boats down there and would like to have us come

(Testimony of Elmoth Hostetler.)

in on the 3rd and get ahold of all the men possible and bring them in on the 3rd.

Q. And on the 3rd how many went to work, three?

A. I don't remember just exactly, I think it was about three or four men is all that went to work on the 3rd; I think three men to be exact.

Q. Three, including yourself?

A. Yes, I believe it was three, including myself.

Q. And did you contact these other two or had Mr. Close contacted them?

A. We got ahold of them, we called them up, called around and finally got ahold of them, one or two of the fellows we couldn't get for a couple or three days, but we finally got ahold of them.

Q. When you say "we," do you mean yourself?

A. Mr. Close and myself.

Q. Mr. Close and you?

A. That is right, we kind of cooperated a little bit. [141]

Q. When you went to work on the 3rd, did you see Mr. Graham around the premises?

A. Yes, I met Mr. Graham, I believe, either the 3rd or 4th, I think I met him in the office, I happened to go in the office, and they introduced Mr. Graham to me.

Q. You knew then that you were working for another employer?

A. I really didn't know it at that time, no, sir, I can't say that I did.

Q. Mr. Close didn't—

(Testimony of Elmoth Hostetler.)

A. No, they told me something was going to happen, but they didn't come out and tell me what it was.

Q. I see. Now, when did—at what hour did the day shift terminate its work on January 25th?

A. 7:30 or 7 o'clock, I think it was 7 o'clock.

Q. 7 o'clock? A. Yes, 7 o'clock.

Q. And did the machinists continue to work until 7 o'clock? A. Oh, yes.

Q. Did any one tell them not to return the next morning?

A. Yes, I told them not to come the next morning, because Mr. Rogers told me that we were finished, and then to verify that I went down and had a talk with him, or Mr. Close, oh, just as soon as I found him, that was along about 6 o'clock, after an hour after I talked with Rogers, and Mr. Close told me the same thing.

Q. Well, isn't it a fact that on that afternoon Mr. Smith came to the plant and had a meeting with the men? [142]

A. Well, he told me after these two fellows had told me, these two fellows had told me first that we were through, and then Mr. Smith also told us afterwards when he came down there.

Q. You say at the time Mr. Rogers said that you were through, did he say that you were discharged and fired?

A. Well, he didn't say we were fired, he said we were finished. I took it for granted that we didn't have any job any more.

(Testimony of Elmoth Hostetler.)

Q. Well, he said—I'll ask to strike what the witness thought on the matter.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Janigian): He did tell you that A. F. L. machinists were coming in?

A. He said definitely they were in, they weren't coming in, they were in, they were taking our places, that's the exact words he said, "They're taking your places."

Q. Mr. Rogers said that?

A. That is right.

Q. Now, were you present at the time there was a meeting at the yard of the machinists on the afternoon of the 25th, when Mr. Smith was there?

A. Well, that was late in the afternoon, yes, I was there at that time.

Q. You were there? A. Yes.

Q. And what did Mr. Smith tell these men?

A. Well, so far as I remember, he told us just about what I have told you, that 284, or the A. F. L. were coming in, [143] and they were out.

Q. Did you protest to Mr. Rogers about the action that was being taken?

A. Well, I didn't have much protest coming.

Q. Isn't it a fact, Mr. Hostetler, that at that meeting of the machinists, at the plant with Mr. Smith present, it was decided to strike the job?

A. Oh, definitely not. We were notified and told before Mr. Smith had anything to say about it, we were told by Mr. Rogers that we were out of a job, we had no job, and then Mr. Close told me

(Testimony of Elmoth Hostetler.)

the same words, he verified Rogers, what Rogers had told me not over an hour before that, and then Smith told us after these two men had told us we were out of a job.

Q. Now, were you present when Mr. Smith served an ultimatum on Mr. Graham, that unless the A. F. L. machinists were out of the plant and the contract was signed with 1304, that there would be a picket line on the 26th?

A. No, sir, I never heard anything like that.

Q. You never heard that? A. No, sir.

Q. Now, you returned to the plant the next morning, didn't you? A. That is right.

Q. At whose request?

A. Mr. Close and Mr. Rogers, and I had permission from Mr. Smith to go back.

Q. Now, why did you have to get permission from Mr. Smith [144] to go back to the plant?

A. Well, I thought that I just wanted to keep my nose clean. I didn't want to stick my neck out, because after all I figured I was doing something a service and a good service by going down there and kind of straightening the boys out. I didn't ask them to go down, they asked me to come down. I didn't ask them to compensate me in any way. I just figured I was doing them a justice.

Q. What did you ask Mr. Smith about going down to the plant?

A. I asked him if it would be all right for me to go down and straighten the boys out, and he

(Testimony of Elmoth Hostetler.)

agreed with me, so naturally that was the only thing for me to do.

Q. You asked him for permission to go down, because you knew that as a member of 1304 you weren't supposed to go down and work under those conditions?

A. They already told me I didn't have a job down there.

Q. Well, I'm asking you——

Trial Examiner Myers: Don't argue with the witness, Mr. Janigian.

The Witness: If somebody tells me I'm out of a job——

Trial Examiner Myers (Interposing): Never mind, Mr. Witness.

Q. (By Mr. Janigian): Did you get this permission from Mr. Smith in writing or orally?

A. No, I just asked him, and he told me it would be O. K. to go down.

Q. When you went down, did you ask Mr. Close whether you [145] could have your job back?

A. No, I didn't.

Q. Did you at any time subsequently ask Mr. Close or Mr. Graham if you could have your job back?

A. No, I never had a chance to talk with them at all. I talked with Mr. Close, but I didn't think there was any use talking as long as conditions were as they were.

Q. As a matter of fact, Mr. Hostetler, you wouldn't have gone back to work and worked with A. F. L. machinists, would you?

(Testimony of Elmoth Hostetler.)

A. That is right, I wouldn't.

Q. And that is also true of the other members of 1304?

A. I can't speak for them, but I surely can speak for myself.

Q. And isn't it also a fact that you were instructed by Mr. Smith that you were not to go back unless 1304, unless and until 1304 had a contract with the Graham Ship Repair Yard?

A. I couldn't very well go back unless we had a contract to go back in there.

Mr. Sapiro: He asked you whether Mr. Smith told you that?

The Witness: No, no, Mr. Smith never told me that.

Q. (By Mr. Janigian): But you and the other men knew that you couldn't go back until you did have a contract?

Mr. Royster: I'll object to that.

Trial Examiner Myers: I'll sustain the objection.

Q. (By Mr. Janigian): Was there any discussion as to whether or not you were to go back unless 1304 had a contract? [146]

Mr. Royster: I object unless he specifies the time, the place, and who was present.

Trial Examiner Myers: Well, if the witness says no, that is the end of it. Overruled. What is the answer?

The Witness: No, I never talked to anybody.

JAMES E. POTTER,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined, and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Potter, James E.

Trial Examiner Myers: Will you spell your last name for the record, please?

The Witness: P-o-t-t-e-r.

Trial Examiner Myers: Where do you live, Mr. Potter?

The Witness: Live at Box 84, Moraga Valley.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Royster.

Q. (By Mr. Royster): What is your employment, Mr. Potter? A. Machinist.

Q. And where are you employed? [147]

A. Hurley Marine.

Q. How long have you been employed by Hurley?

A. Oh, about a month, I guess, three weeks or a month.

Q. Did your employment there start some time in February? A. Yes.

Q. Were you ever employed by the Graham Ship Building or Ship Repair Company?

A. Yes.

Q. When was your employment there?

A. When did it start?

(Testimony of James E. Potter.)

Q. Yes. A. Oh, about January 26th.

Trial Examiner Myers: When?

The Witness: June 26th.

Trial Examiner Myers: What year?

The Witness: '44. That is Judson.

Q. (By Mr. Royster): Judson-Pacific War Industries?

A. Yes.

Q. How long did your employment with Judson continue there?

A. Well, it never stopped, it went right on until Mr. Graham took it over, and I was never unemployed.

Q. Well, take now the last week in December, 1944, did you perform any work for Judson-Pacific that week? A. The last week in December——

Trial Examiner Myers: Why don't you get the payroll records and show when these people were working there, and I guess Counsel will stipulate that the records are correct.

Mr. Royster: I don't have any payroll records for Judson. [148]

The Witness: I don't just remember.

Q. (By Mr. Royster): Were you ever discharged by Judson? A. No.

Q. Were you laid off occasionally?

A. I believe we were laid off around—due to a lack of work, around Christmas.

Q. Around Christmas time? A. Yes.

Q. Were you told when to report back to work?

A. Yes, we were told—Mr. Hostetler informed

(Testimony of James E. Potter.)

me there was more work in the yard and we could come back. I think we were out about ten days or so.

Q. I see. Did you return to work then around the 3rd of January? A. Yes.

Mr. Janigian: Well, I'm going to object to—excuse me, I'm going to object to the last question on the grounds it's leading and suggestive.

Trial Examiner Myers: I'll sustain the objection. When did you start to work in 1945?

The Witness: You mean after the layoff?

Trial Examiner Myers: The first day this year, when you started to work at this yard?

The Witness: Let me see—

Mr. Royster: Mr. Examiner, Board's Exhibit 7, I believe it is, which went into evidence, shows the name of Potter.

Trial Examiner Myers: Why did you ask the question then. Does it show when they started to work, or those are the days they were working?

Mr. Royster: Shows he was on the payroll on the 5th day of January. I was thinking it was the 3rd.

Trial Examiner Myers: Well, did he start on the 5th or the 2nd, 3rd, or 4th?

Mr. Royster: Well, apparently the witness' recollection doesn't extend to that. The Exhibit shows him to be working on the 3rd.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Royster): Are you a member of any labor organization?

(Testimony of James E. Potter.)

A. No, that is, the C. I. O. 1304.

Q. And how long have you been a member of Local 1304?

A. Oh, probably seven months, six or seven months.

Q. Were you a member in good standing of Local 1304 during the entire month of January, 1945?

A. Yes.

Q. When did you leave your employment at Graham?

A. On the evening of the 25th.

Q. Of what month?

A. That was in January.

Q. Of this year?

A. Yes.

Q. Will you tell us the circumstances under which your employment ended?

A. Well, we came in, we were out on the ship and came in the office, that is in our tool room, and we were notified that the A. F. L. had come in to take possession of the yard.

Q. And about what time of day was this? [150]

A. What is that?

Q. What time of day was this?

A. We were notified, I believe, about 5 o'clock.

Q. Who notified you?

A. Mr. Hostetler.

Q. Did you have any conversation with Mr. Rogers that evening?

A. No, I never knew the gentleman.

Q. Or Mr. Close?

A. I knew Mr. Close.

Q. Did you have any conversation with him that evening?

(Testimony of James E. Potter.)

A. Oh, just no more than to ask him what the score was, he said he didn't know just what the score was.

Q. Did Mr. Hostetler—what was your testimony as to what Mr. Hostetler told you?

A. He said that the A. F. L. was in, and he says, "I guess we are not, we are through."

Q. Did you work a full day on January 25th?

A. Yes.

Q. Did you report for work the next morning?

A. No, we did not.

Q. Have you been back to Graham Ship since January 25th?

A. Only to drop in occasionally, say hello to some——

Q. I didn't hear.

A. Only to drop in and say hello to Jimmy Close and a few others as I went by, that is all.

Trial Examiner Myers: Were you paid off on the 25th?

The Witness: No. [151]

Trial Examiner Myers: When were you paid off?

The Witness: Oh, I think it was—I believe it was a couple of weeks after that, about ten days, I guess.

Trial Examiner Myers: Did you go to the plant for your money?

The Witness: Went down to the plant, yes.

Q. (By Mr. Royster): Have you made any request to be reinstated to your position at Graham's?

(Testimony of James E. Potter.)

A. No, I never did.

Q. I'll show you Board's Exhibit 5(h) for identification, and ask you if you can identify that card?

A. Yes. Do you want me to read this?

Q. Well, just tell us what it is?

A. Well, it's a—keeping track of—they've got the dues down here when they were paid, and the month they were paid in.

Q. Does that accurately represent the dues that you paid Local 1304?

A. That represents the dues I've paid 1304, yes, sir.

Mr. Royster: I'll offer Board's Exhibit 5(h) in evidence.

Trial Examiner Myers: Any objection, Gentlemen?

Mr. Stimmel: No objection.

Mr. Janigian: No objection.

Trial Examiner Myers: There being no objection, the card is received in evidence, and I'll ask the reporter to please mark it as Board's Exhibit 5(h).

(Thereupon the document heretofore marked Board's Exhibit 5(h) for identification was received in evidence.) [152]

(Testimony of James E. Potter.)

BOARD'S EXHIBIT No. 5(h)

No. 21928

JAMES E. POTTER,
Box 84
Moraga, Calif.

Mach.

Month	Date Paid	1944		Dues	Date Paid	1945		Dues
		Card Issued				Card Issued		
Jan.					1/5/45	5496		\$2.00
Feb.					1/5/45	5496		2.00
Mar.					1/5/45	5496		2.00
Apr.	(Judson)							
May								
June	6/23/44	5022		\$12.50				
July	7/17/44	5098		I				
Aug.	7/17/44	5098		2.00				
Sept.	7/17/44	5093		2.00				
Oct.	10/23/44	5337		2.00				
Nov.	10/23/44	5337		2.00				
Dec.	10/23/44	5337		2.00				

ELGA O. ASHCRAFT,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined, and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Elga O. Ashcraft.

Trial Examiner Myers: Will you spell your entire name?

The Witness: E-l-g-a O. A-s-h-c-r-a-f-t.

(Testimony of Elga O. Ashcraft.)

Trial Examiner Myers: Where do you live, Mr. Ashcraft?

The Witness: 16771 Melody Way, San Leandro.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Royster.

Q. (By Mr. Royster): What is your employment, Mr. Ashcraft?

A. Machinist.

Q. And where are you employed? [153]

A. Hurley Marine.

Q. How long have you been working there?

A. I went to work for them the 8th of February, '45.

Q. Were you ever employed by Judson——

Trial Examiner Myers: 8th of what, February?

The Witness: Yes.

Q. (By Mr. Royster): Were you ever employed by Judson-Pacific War Industries?

A. Yes.

Q. When did you begin your employment there?

A. I believe it was June the 30th, 1944.

Q. Were you employed there in December of last year? A. Yes, sir.

Q. What was your classification when you worked for Judson?

A. I had charge of the machine shop.

Q. What was your payroll classification, do you recall?

A. Well, it was the repair scale, dollar thirty-four.

Q. As a machinist? A. Yes.

(Testimony of Elga O. Ashcraft.)

Q. Now, in the last week of December, 1944, did you perform any work at Judson-Pacific's Yard? A. The last week, no, sir.

Q. Were you—how does it happen that you performed no work in that last week?

A. Well, there wasn't any work from about—I don't remember the exact date, but it was just a few days before Christmas until I went back, the 3rd of January.

Q. Well now, how did you come to go back to work on the 3rd [154] day of January?

A. I happened to be in Oakland, and I dropped down to the yard on the 2nd, and they told me to report for work the 3rd.

Q. Who told you?

A. The yard superintendent.

Q. Is that Mr. Close?

A. That was Mr. Close's assistant.

Q. Mr. Rogers?

A. Nick Carlson, I believe, is his name.

Q. Now, during your employment with Judson-Pacific War Industries, did you have a clock number? A. Yes, sir.

Q. Did you have a badge? A. Yes, sir.

Q. Did your clock number change in any respect after January 1st, 1945? A. It did not.

Q. Did your badge number change in any way?

A. No, sir.

Q. After January 1st, 1945? A. No, sir.

Q. Have you ever worked for W. C. Graham, respondent in this case? A. No, sir.

(Testimony of Elga O. Ashcraft.)

Q. Have you ever worked for Graham Ship Repair Company?

A. Well, from January the 3rd until the night of January the 25th. [155]

Q. When you went to work on January the 3rd, did any one say anything to you with respect to a change in management or ownership?

A. I didn't know it for about three days.

Q. Are you a member of any labor organization?

A. C. I. O. Local 1304.

Q. And how long have you been such a member?

A. I don't recall just the exact date that I went into it, but——

Q. Were you a member of Local 1304 on January 1, 1945? A. Yes, sir.

Q. Were you a member in good standing on January 25, 1945? A. Yes, sir.

Trial Examiner Myers: Were you a member in good standing throughout the month of January, 1945?

The Witness: Yes, sir.

Q. (Mr. Royster) Did you work the day of January 25, 1945? A. Yes, until 7 o'clock.

Q. And will you tell us what happened in the afternoon of that day?

A. Well, Mr. Hostetler came down about, oh, I imagine it was some place between five and six, and said that he had just been told that we was out of a job, that the A. F. L. was coming in at seven o'clock, so that is about all that was said.

(Testimony of Elga O. Ashcraft.)

Q. Did you talk to Mr. Close that evening?

A. I never, no, sir. [156]

Q. Did you—were you present when Mr. Close was in conversation with any one with respect to the A. F. L. coming in? A. No, sir.

Q. Did you hear any conversation in which Mr. Rogers was engaged with respect to that?

A. No, sir.

Q. Did you report for work on the morning of January 26th? A. No, sir.

Q. Have you been back to the Graham Ship Repair Company to seek reinstatement?

A. No, sir.

Q. To your job? A. No, sir.

Mr. Royster: That is all.

Mr. Stimmel: No questions.

Trial Examiner Myers: Any questions, Mr. Janigian?

Cross Examination

Q. (By Mr. Janigian) Did any one tell you, Mr. Ashcraft, on January 25th that you were not to return to work the next morning, any one connected with the Graham Ship Repair Company?

A. Well, just Mr. Hostetler, he was out too.

Q. But Mr. Hostetler was one of the machinists. A. That is right.

Q. Did Mr. Close or——

A. I never talked to Mr. Close.

Q. Or Mr. Rogers, any—did any of the bosses tell you [157] not to come back to work the next day? A. Well, Mr. Hostetler was my boss.

(Testimony of Elga O. Ashcraft.)

Q. What was his position?

A. He was acting foreman.

Q. Was he an acting foreman at that time, or just a leaderman? A. Foreman.

Q. Foreman? A. Yes.

Q. And did he tell you not to come back the next day? A. Yes.

Q. By the way, were you present at a meeting that was called by Mr. Smith of the union at the plant of the Graham Ship Repair Company that afternoon, on January 25th?

A. I was.

Q. What was said at that meeting, do you know?

A. Well, just said that the A. F. L. was coming in at 7 o'clock, and looked like we was through.

Q. Well, the A. F. L. men, who were coming in at 7 o'clock, were coming in to take over the night shift, isn't that right?

A. Well, probably take it all over.

Q. Well, just answer the question. They were going over to take the night shift; that is right, isn't it?

Mr. Sapiro: I object to that as calling for a conclusion of the witness. If there is any conversation, Mr. Examiner, that is something.

Trial Examiner Myers: Overruled. Read the question to the witness. [158]

(The question referred to was read by the reporter.)

The Witness: That is not the way it was put

(Testimony of Elga O. Ashcraft.)

to me. They was going to take over, we was out of a job.

Q. (By Mr. Janigian) Who said that?

A. Well, that is what Mr. Hostetler said that Mr. Rogers said.

Q. Well, what did Mr. Smith say about this at that meeting?

Mr. Royster: I think I'll object to that. I don't believe that is pertinent here.

Trial Examiner Myers: Overruled.

Mr. Royster: Mr. Smith is a representative of these employees as business agent, and whatever advices may pass between them doesn't seem to me is the subject of inquiry here.

Trial Examiner Myers: Overruled.

The Witness: As near as I remember, he just said that we was out, that we never reported in the 26th.

Q. (By Mr. Janigian): How long did this meeting take?

A. Oh, I imagine we talked for twenty minutes to a half hour.

Q. And what part of that time was taken up by Mr. Smith?

A. Oh, I'd say five or ten minutes.

Q. And in that five or ten minutes he made just that one statement, Mr. Ashcraft?

A. Well, that is all I remember of it. There was quite a bit of confusion there. We didn't know which leg we was standing on.

(Testimony of Elga O. Ashcraft.)

Q. Did he say anything about putting a picket line out there the next day? [159] A. No, sir.

Q. You're sure about that? A. Positive.

Q. Did he say anything about as to whether or not you should work with A. F. L. machinists?

A. I don't recall just exactly what was said in regards to that.

Q. You have no recollection? A. No.

Q. Was the question of getting a contract with Graham Ship Repair Company taken up at that meeting?

A. Well, I don't remember that either.

Q. You have no recollection? A. No.

Q. The only thing you remember was that you were told you were out? A. That is right.

Q. What work are you doing now?

A. Machinist.

Q. At Hurley?

A. Hurley Marine, yes, sir.

Q. Hurley Marine? A. Yes, sir.

Q. Getting the same pay that you were getting at Graham? A. Yes, sir.

Q. Are you a journeyman machinist?

A. Well, I've been at it sixteen years.

Q. Well, I asked you if you were a journeyman machinist, [160] classified as such?

A. Yes.

Q. And you're still classified as a journeyman?

A. Yes.

Mr. Royster: We are, sir. I have a stipulation to propose, Mr. Examiner. It's hereby stipulated

among the parties in this proceeding, that Frank Shaffer, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, C. B. Lewis, and Albert B. Sequeira were members in good standing of East Bay Union of [161] Machinists Local 1304 C. I. O. during the month of January, 1945, and that all production employees employed by Graham Ship Repair Company at its Oakland plant in classifications other than machinists, machinist helpers, machinist apprentices, and machinist trainees from January 2 to January 25, 1945, were cleared through and were members of the respective A. F. L. unions affiliated with the Bay Cities Metal Trades Council.

Trial Examiner Myers: Do you so stipulate, Mr. Royster?

Mr. Royster: I so stipulate.

Trial Examiner Myers: Mr. Stimmel?

Mr. Stimmel: We so stipulate.

Mr. Janigian: I'll so stipulate with just two corrections on my own, production and maintenance employees and to and including January 2nd—I mean January 2nd.

Trial Examiner Myers: Off the record.

(Discussion off the record)

Trial Examiner Myers: On the record now. What about the stipulation?

Mr. Royster: It developed during an off the record conference, Mr. Examiner, that it would be desirable to augment this stipulation, and it will require the company to furnish certain further information. The Board is in the position of being

able to rest at this point with the understanding that a further stipulation may be placed in the record tomorrow.

Trial Examiner Myers: Very well. Are you ready to proceed with your case, Mr. Stimmel?

Mr. Stimmel: Yes. [162]

Mr. Janigian: Excuse me, I don't like to cut your examination short, but I'm willing to stipulate that the machinist requires considerable skill and training, and [163] that the trade of a machinist is a skilled trade. Does that help?

Mr. Royster: Yes.

Mr. Sapiro: Are you willing to stipulate that the machinists are an appropriate bargaining unit, separate and apart from the whole plant?

Mr. Janigian: You mean in this case?

Trial Examiner Myers: He means could they be considered an appropriate unit.

Mr. Janigian: Under certain circumstances they could be, I presume, but we're denying that in this case the machinists are appropriate, we say that the over all unit, the collection of crafts constitutes the appropriate unit.

Mr. Royster: May I propose this stipulation then, Mr. Janigian: That the machinist employees of the respondent here are—during the month of January, 1945, were skilled machinists and possessed the attributes of employment usually associated with the designation of machinist?

Mr. Janigian: Yes, I'll so stipulate.

Trial Examiner Myers: Do you so stipulate, Mr. Royster?

(Testimony of Warren C. Graham.)

Mr. Royster: I so stipulate.

Trial Examiner Myers: Do you so stipulate, Mr. Stimmel?

Mr. Stimmel: Yes.

Q. (By Mr. Royster) Now, Mr. Hostetler, were machinists working under your direction transferred to other work in the ship repair yard from time to time? [164]

A. I don't quite understand.

Q. Were machinists required or requested to do anything but machinists' work?

A. Absolutely nothing but machinists' work.

Q. Were other tradesmen called in on occasion to help do machinists' work? A. No, sir.

Mr. Royster: That is all. [165]

WARREN C. GRAHAM

a witness recalled by and on behalf of the Repondent, having been previously sworn, was examined, and testified further as follows:

Direct Examination

Trial Examiner Myers: You may be seated, Mr. Graham.

Q. (By Mr. Stimmel) Mr. Graham, did you at any time sign a contract with the C. I. O. Union?

A. No, sir.

Q. Did you at any time see a contract signed

(Testimony of Warren C. Graham.)

by the C. I. O. Union and the Graham Ship Repair Company? A. No.

Q. By an agent of your company? A. No.

Q. I believe you testified earlier in the case that you saw some agreement in Mr. Janigian's office; do you recall that agreement? A. That was—

Q. I show you this paper which is purported to be the agreement referred to.

A. Yes, I saw this two days ago.

Q. Would you read that to the Court please?

Mr. Sapiro: Let us see it, will you please, before you have him read it?

Mr. Stimmel: Oh, pardon me.

Mr. Sapiro: We object to that reading into the record, [166] If he wanted to introduce the document, it should be introduced.

Trial Examiner Myers: Why don't you offer it in evidence and substitute a copy?

Mr. Stimmel: I offer it in evidence.

Trial Examiner Myers: Any objection?

Mr. Sapiro: I object to it on the ground that it refers to an attached agreement, it's an incomplete document.

Trial Examiner Myers: That is what the witness saw in Mr. Janigian's office, and that is all he was asked to testify to. The objection is overruled. And I'll receive the paper in evidence and ask the reporter to please mark it as Respondent's Exhibit 1.

(Thereupon the document above referred to was received in evidence, and marked Respondent's Exhibit 1)

(Testimony of Warren C. Graham.)

RESPONDENT'S EXHIBIT No. 1

Bay Cities Metal Trades Council

Main Office

Labor Temple, 2940-16th Street

Telephone UNDERhill 3055 and MARKET 1225

San Francisco 3, California

ACCEPTANCE OF AGREEMENT

It Is Mutually Agreed To, by and between the Employer signatory hereto, engaged in Ship Repair work in the San Francisco Bay Area and the Bay Cities Metal Trade Council of the American Federation of Labor and its affiliated unions, that the Bay Cities Metal Trades Council Ship Repair Agreement attached hereto, shall remain in force and effect in accordance with the terms contained herein.

Dated this 2nd day of January, 1945.

GRAHAM SHIP REPAIR
COMPANY

By /s/ RAYMOND LEHANEY

BAY CITIES METAL TRADES
COUNCIL

By /s/ A. T. WYNN

Secretary

By /s/ THOMAS A. ROTELL

Asst. Sec.

(Testimony of Warren C. Graham.)

Mr. Sapiro: May I make the further objection on that the time in question, the purported date thereof, there was not a single machinist employed in the plant, or in fact there weren't any employed.

Trial Examiner Myers: I'm not passing upon the validity of the contract. The witness is asked if this is the paper that he saw in Mr. Janigian's office two days ago.

Q. (By Mr. Stimmel) Mr. Graham, did you at any time see the instrument to which this document refers?

A. No, sir.

Trial Examiner Myers: Whose signature is that under [167] Graham Ship Repair Company?

The Witness: Raymond Lehaney.

Q. (Mr. Stimmel) Mr. Graham, did you at any time authorize Mr. Lehaney to sign that document, or sign a similar document?

A. Yes, I authorized him to sign an agreement with the Bay City Metal Trades Council, and also authorized Mr. Close to sign one with Mr.—with 1304.

Q. Mr. Graham, did Mr. Lehaney at any time tell you that that contract was signed as of the date which the instrument bears?

Mr. Sapiro: Object to it as hearsay?

Trial Examiner Myers: Overruled.

The Witness: No, he did not.

Q. (Mr. Stimmel) At this conference with Mr. Johnson, Mr. Lehaney, Mr. Smith, and others, on January the 12th——

A. (Interposing) 16th or 17th.

(Testimony of Warren C. Graham.)

Q. 16th, did Mr. Smith ever show to you or display to you a contract with the C. I. O. Union, which he asked you to sign?

A. I did not see one then.

Q. Did he offer one to you?

A. Not to my knowledge.

Q. Up to that date and time you knew of the existence of no contract with the C. I. O. Union?

A. No, sir.

Q. Did you at any time on January the 25th, 1945, or at any time thereafter notify any of your employees that their [168] employment terminated?

A. Personally, no, sir.

Q. Did you instruct Mr. Lehaney or Mr.—or your shop superintendent, hull superintendent, to advise any employees that their employment was terminated because of any union affiliations?

A. No, that matter was handled entirely by Lehaney.

Mr. Stimmel: That is all.

Trial Examiner Myers: Any questions, Mr. Janigian?

Cross Examination

Q. (By Mr. Janigian) How many production and maintenance employees did you work on January 2nd, Mr. Graham?

A. Eighteen, I think, nineteen or eighteen, I don't know which figure is correct.

Q. Could you ascertain those correct figures?

A. Yes.

Q. And will you also ascertain the number, the

(Testimony of Warren C. Graham.)

total number of production maintenance employees including machinists who were working on the 13th, 14 and 15th of January?

A. 13th, 14th and 15th?

Q. Of January.

A. What other date?

Q. January 13th, 14th and 15th.

A. Those are the only three dates?

A. Yes. A. And the 2nd?

Q. And the 2nd, yes. A. Yes. [169]

Q. Now, you can have that information in the morning, Mr. Graham? A. Yes.

Q. By the way, was there a manpower ceiling established for your plant at the time you commenced operation? A. There was.

Q. That man power ceiling was what?

A. 250 men, a temporary ceiling of 250.

Mr. Janigian: That is all.

Trial Examiner Myers: Any questions, Mr. Royster?

Cross Examination

Q. (By Mr. Royster) I want to ask a question or two about this Respondent's Exhibit 1. Did you witness any of the signatures affixed to this, Mr. Graham? A. Did I witness them?

Q. Did you see any of the signatures made on here? A. No, sir.

Q. Do you know what date the signatures were affixed to this? A. No, sir, I do not.

Q. Do you recall correctly that your testimony

(Testimony of Warren C. Graham.)

is that you have not seen the agreement to which this document refers? A. That is correct.

Trial Examiner Myers: And you say you only saw this Respondent's Exhibit 1 a few days ago?

The Witness: Day before yesterday.

Trial Examiner Myers: For the first time?

The Witness: Yes. [170]

Trial Examiner Myers: That was for the first time?

The Witness: That is correct.

Cross Examination

Q. (By Mr. Sapiro) Now, at this conference that you were asked about by your Counsel, did Mr. Lehaney tell anybody there, or tell Mr. Smith, that he had signed a contract with the A. F. L. covering machinists prior to that time?

A. Yes, Lehaney stated that he had signed a contract with the A. F. L., and that we were endeavoring to persuade the A. F. L. to permit the C. I. O. machinists to work in the yard.

Q. And was any contract exhibited at that time?

A. No, sir.

Q. Well, did you make any inquiry as to the contract at that time? A. No, sir.

Q. Did you ever ask Lehaney, either prior to that time or prior to January the 25th, about the terms of the contract? A. No, sir, I did not.

Q. Well, weren't you interested in it?

A. I wanted it presented to me, but after that

(Testimony of Warren C. Graham.)

Lehaney had left, and I didn't get an opportunity to so ask him.

Trial Examiner Myers: Left where?

The Witness: Left our employ. [171]

Trial Examiner Myers: When was that?

The Witness: At the beginning of February.

Trial Examiner Myers: This year?

The Witness: Yes, sir.

Q. (By Mr. Sapiro) Now, on January 25th and 26th did you have any conversation with Lehaney about the hiring of A. F. L. machinists?

A. Yes.

Q. Did he tell you that he had signed a contract for A. F. L. machinists?

A. Yes, he had, said he had, and that—he didn't mention machinists specifically, but he stated that the A. F. L. wanted all of the employees in the yard to be affiliated with the Bay Cities Metal Trades Council.

Q. And——

A. (Interposing) And stated that he had an agreement with them not to disturb the yard until after we had finished this important work which we were doing, which occurred around the 25th or 26th of the month.

Q. Well, did you ask him why the A. F. L. machinists were coming in that day?

A. He had said that they insisted on a complete closed shop agreement and would permit no yard to operate in the bay area unless it was such an agreement.

(Testimony of Warren C. Graham.)

Q. Well, did you discuss with him the reason why C. I. O. machinists had been working there since January the 2nd?

A. Yes, he understood that.

Q. Pardon me, what did he say and what did you say about that? [172]

A. We both discussed the working of the C.I.O. machinists, stating that they were the same type of craft that were working in the other principal yards, and unless we had those C.I.O. machinists, why it would seriously affect our business, because we couldn't send our ships to other yards or into dry dock, which we do not have any, because the other C.I.O. machinists in the other dry docks wouldn't work our ships.

Q. When was that discussion, on what day?

A. Oh, we discussed that around the time of this—that discussion started around the 10th, somewhere around the 10th of January, continued on through until the latter part of February.

Q. Was there any discussion of that at the meeting on January the 17th?

A. Yes, we were endeavoring to——

Q. Well, tell us what—I want to know what you said?

A. Mr. Lehaney and Mr. Smith were going at each other fairly hot, and we told Mr. Smith that we were endeavoring to get permission of the A.F.L. to permit C.I.O. machinists to work in the yard. Mr. Smith stated, and we asked him for any help or assistance that he might have or know of

(Testimony of Warren C. Graham.)

which would further that argument, Mr. Smith stated that he had a ruling of the Court which would further the argument, and to present our case to the A.F.L., and Mr. Lehaney asked him to produce it. He said he would. That was—this meeting was in the morning, and I think the time that Mr. Smith said he would produce it was around 11 o'clock. I insisted that Lehaney get it as soon as he could, to go up to the headquarters of the Bay City Metal Trades Council. I talked to Mr. Lehaney and later called him on the phone and asked him had he—did he have this document, and he said no. he had called Mr. Smith and Mr. Smith had said that he was typing it. Then I called him again and asked him if he got the agreement, and Mr. Lehaney said no. Mr. Smith had then told him he had to get it from his lawyer, and then about in the afternoon at 1 or 2 o'clock, why Mr. Lehaney went up to the Bay City Metal Trades without it.

Q. Well, that discussion was concerning a case known as the Pacific Box Company case, was it not?

A. We did not mention any names there.

Q. Did Mr. Smith say that under the authorities, as he understood them, that the contract carried over, wasn't that the subject of the conversation?

A. No, he didn't state specifically what it was, but they stated that this would be evidence for us to present to the Bay City Metal Trades Council, to get them to permit the C.I.O. machinists to work in the yard.

Q. Well, you were not willing, or didn't you so

(Testimony of Warren C. Graham.)

state at that time that you couldn't sign a contract, because Lehaney had already signed one with the A.F.L.?

A. No. I heard Lehaney tell the Bay City Metal Trades Council that we had signed a contract with the C.I.O.

Q. When did Lehaney say that to——

A. (Interposing): Around the 13th. And he insisted that [174] Jim Close get in touch with Mr. Smith and have him sign the contract, so he could produce it, and I think—and then at that time requested Jim to date it before the 15th, and we could not or did not produce a contract on the 15th, so Lehaney told them that he didn't have the contract.

Trial Examiner Myers: Told who?

The Witness: Told Bay City Metal Trades Council.

Trial Examiner Myers: That you did not have——

The Witness: That we did not have a C.I.O. contract, then they insisted that the entire yard be A.F.L.

Trial Examiner Myers: What did you do then?

The Witness: We continued a series of negotiations with the Bay City Metal Trades Council, several meetings, which we endeavored to have the Bay City Metal Trades Council permit us to use the C.I.O. machinists, but after several meetings they decided that they wouldn't permit us to do so.

Trial Examiner Myers: When did they notify you then?

(Testimony of Warren C. Graham.)

The Witness: Around the beginning of February.

Trial Examiner Myers: Of this year?

The Witness: Yes.

Trial Examiner Myers: After the 25th?

The Witness: That is right.

Trial Examiner Myers: What did you do then?

The Witness: I consulted——

Trial Examiner Myers: I mean regarding the C.I.O.?

The Witness: Then I told Mr. Smith that I had decided that the appropriate action to take was through the [175] legal authorities of the government, and that would be my answer.

Trial Examiner Myers: And about when was that, that you told that to Smith?

The Witness: It was somewhere around the beginning of February.

Q. (By Mr. Sapiro): At that conversation that you now refer to, Mr. Smith demanded or requested, put it that way, that the C.I.O. machinists be reinstated and put back to work?

A. At that time, yes; he didn't demand, he requested, he stated that he could not only furnish us with C.I.O. machinists, but if need be the remaining of the crafts; in other words, he was endeavoring to make up our minds together as to our final action.

Q. And at that time you hadn't seen the so-called contract?

A. That is right, I hadn't seen any contracts.

(Testimony of Warren C. Graham.)

Q. Now, was there more than one contract signed with the A.F.L. that you know of?

A. No, sir, the only contract that I have heard about is this one, which I saw.

Q. The document, Respondent's Exhibit No. 1, which you just pointed at, is that the only document that was shown to you in Mr. Janigian's office?

A. That is the only labor agreement I've seen.

Q. Neither you nor your counsel have in your possession any other contract or contracts?

A. None whatever.

Q. Now, on the meeting of the 17th, as you say Mr. Lehaney [176] state to Mr. Smith that he had signed a contract; that was the first you had ever heard of it?

A. That was the first I had ever heard of it.

Q. So that you knew on that date that you were obligated to the A.F.L. without knowing the terms of the contract?

A. Yes, I did then, yes.

Q. That was the first time you ever heard of it?

A. That is right.

Q. And would you have signed a contract with Mr. Smith that day after what Lehaney had told you?

A. At that particular date?

Q. Right then and there.

A. That I don't know.

Mr. Sapiro: I think that is all.

Trial Examiner Myers: Any redirect, Mr. Stimmel?

Mr. Stimmel: No questions.

Trial Examiner Myers: Mr. Janigian, any questions?

(Testimony of Warren C. Graham.)

Recross Examination

Q. (By Mr. Janigian): Mr. Graham, after you gave Mr. Lehany authority on January 2nd to enter into an agreement with the Bay Cities Metal Trades Council, you didn't revoke that authority, did you?

A. No, sir.

Mr. Janigian: That is all.

Mr. Royster: That is all.

Trial Examiner Myers: You're excused, sir.
Thank you.

Recross Examination

Q. (By Mr. Sapiro): Pardon me, just one question. On January the 17th, if that be the date of the conversation—— [177] A. Yes.

Q. Did you know that at that time all of the men who were employed as machinists or machinists' helpers or machinist mechanics were members of the C.I.O.? A. Yes, sir.

Q. Did you know that on that date there were no members of the A.F.L. Machinists Union, whatever the number may be, employed by your company? A. I did.

Trial Examiner Myers: Did you know that to be a fact from January 2nd to January 25th, 1945?

The Witness: It was around perhaps the 4th or 5th that I discovered the thing that they were, but I did not from then on until this 25th.

Mr. Sapiro: That is all.

(Testimony of Warren C. Graham.)

Recross Examination

Q. (By Mr. Janigian): Now, Mr. Graham, how do you know that these men, from you employed as machinists at your yard, from January 4th or 5th until the 17th, were members of the C.I.O. Machinists Union?

A. I know we got them from there.

Q. You know you got them? A. Yes.

Q. How do you know that?

A. Because they're on our personnel man's card, above his desk was Machinist C.I.O. Templebar 3700, or whatever the number is there.

Q. And that is the only—— [178]

A. That is the only place we called for machinists.

Q. And you base your answer then on that statement, on that information that you had, that they were calling the C.I.O. Local for machinists?

A. That is correct. They were clearing through that local.

Q. And all of the rest of the cards were cleared through the respective A.F.L. locals?

A. A.F.L.

Q. Members of the A.F.L. Metal Trades Council, is that right? A. That is correct.

Mr. Janigian: I think that is all.

Recross Examination

Q. (By Mr. Sapiro): I think this morning you testified, overheard telephone conversations calling that number asking for machinists?

(Testimony of Warren C. Graham.)

A. That is correct.

Q. Out of your office? A. That is right.

Q. Or the personnel office?

A. That is right.

Trial Examiner Myers: Any other questions, gentlemen? You're excused, sir. Thank you very much.

(Witness excused.) [179]

THOMAS A. ROTELL,

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Thomas A. Rotell.

Trial Examiner Myers: Will you please spell your last name?

The Witness: R-o-t-e-l-l.

Trial Examiner Myers: Where do you live, Mr. Rotell?

The Witness: 36 Santa Rosa, Sausalito.

Trial Examiner Myers: You may be seated sir. You may proceed, Mr. Stimmel.

Q. (By Mr. Stimmel): Mr. Rotell, I show you this document which has been identified as Respondent's Exhibit No. 1. Have you seen that document before? A. I have.

(Testimony of Thomas A. Rotell.)

Q. I point out to you at this time this signature here; is that your signature? A. That is.

Q. You remember signing it?

A. Very well, sir.

Q. Could you state to the Court, please, the date on which that document was actually signed?

A. January the 2nd, 1945.

Q. You're sure of that?

A. That is positive.

Mr. Stimmel: That is all. [183]

THOMAS A. ROTELL.

a witness recalled by and on behalf of the Respondent, having been previously sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Stimmel): Mr. Rotell, were you present when Mr. Wynn signed this document?

A. I was.

Q. And what date was that document signed by him? A. January the 2nd, 1945.

Q. You're sure that it was not signed on the 12th?

A. I am positive that was signed on the 2nd of January.

Trial Examiner Myers: When did Mr. Lehaney sign it, do you know?

The Witness: I would say around 11 a.m.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: Did he sign it the same day you signed it?

The Witness: The same day, yes, sir, in the offices of the company.

Mr. Stimmel: That is all.

Cross Examination

Q. (By Mr. Royster): Just a moment, I want to ask one question. When you saw Mr. Wynn affix his signature to that document, who was present other than Mr. Wynn and yourself?

A. Girls in the office.

Q. Was Mr. Lehaney present?

A. Yes, sir.

Q. And was Mr. Wynn present when you signed?

A. Yes, sir.

Q. And was Mr. Lehaney present when you signed? A. Yes, sir.

Q. And were both you and Mr. Wynn present when Mr. Lehaney signed?

A. Yes, sir. I want to stipulate, for the record, if I may that——

Mr. Sapiro: I object to any——

Trial Examiner Myers: I'll sustain the objection.

Q. (By Mr. Royster): Was Mr. Graham there that day? A. No, sir.

Q. This was on the 2nd day of January?

A. Right.

Q. Had he been there at your office on that day?

A. Not that day, no, sir.

(Testimony of Thomas A. Rotell.)

Q. On what day, if ever, was Mr. Graham at your office?

A. My recollection was January the 4th.

Q. Did you have a conversation with Mr. Graham on that occasion?

A. In the morning, yes, sir.

Q. Do you recall what that conversation was?

A. Pretty well.

Q. Will you tell us what the conversation was?

A. Mr. Graham and Mr. Lehaney came to the offices of the Council to discuss the condition of the agreement. They arrived at the office approximately 9 o'clock in the morning. A meeting was called that morning, representatives of the various unions affiliated with the Council in the [185] Oakland area in to a special session to discuss this agreement. Mr. Lehaney and Mr. Graham waited in the offices of the Council in Room 305, pending the completion of the meeting, at the termination of which Mr. Graham and Mr. Lehaney were called into the meeting of a sub-committee that was appointed through the general committee.

Q. Were you on that sub-committee?

A. I was.

Q. And who else was—comprised that committee?

A. Don Cameron, representative of the International Brotherhood of Carpenters; Mike Stafford, Pacific Coast District Executive Secretary; Tom Marr, representing the International Brotherhood of Painters; Al King, representing the Interna-

(Testimony of Thomas A. Rotell.)

tional Brotherhood of Painters; Mr. Truax, representing the International Association of Machinists; William McConnell, representing the International Brotherhood of Boiler Makers.

Q. And other union representatives?

A. And other union representatives.

Q. And this was on the 4th of January, 1945?

A. Yes, sir.

Q. What information, if any, was given to Mr. Graham at that time that you heard?

A. All the terms and the conditions of the agreement were discussed.

Trial Examiner Myers: What agreement?

The Witness: The Pacific Coast Mastership Repair agreement, effective in the San Francisco Bay area. Also the question was discussed of supplying manpower. [186]

Q. (By Mr. Royster): Did you or any one else at that meeting inform Mr. Graham that a contract had been signed between his company and the Bay City Metal Trades?

A. It was generally understood that it was, because we had it, Mr. Lehaney had a copy and we had a copy.

Q. Did Mr. Graham have a copy that you saw?

A. I don't know whether Mr. Graham had a copy or not, his representative did.

Q. Did you specifically talk with Mr. Graham about this agreement, which you say was signed on the 2nd day of January?

A. On January the 4th I did.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: Was the master agreement submitted to Mr. Graham or Mr. Lehaney?

A. A copy was attached to the stipulation, which is contained in the folder, which Mr. Lehaney had a copy of with the copy of the agreement attached thereto.

Q. And did he sign the master agreement?

A. At a later date.

Q. What date was that?

A. I would say the master agreement was signed about two weeks later. The agreements were in the printers being printed, and in the absence of the printed form of the agreement, we just signed that stipulation pending the receipt and arrival of the agreements.

Q. Where is the agreement that Mr. Lehaney signed two weeks after the——

A. We have a copy of it here, sir. [187]

Q. The one with his signature on it?

A. Yes, sir.

Q. And you say that was signed about two weeks after? A. About two weeks after.

Q. At the time that Mr. Lehaney signed Respondent's Exhibit 1, did he ask for any evidence that the Council represented the majority of the employees at Mr. Graham's plant?

A. The discussions bore that out that we did. One of the terms of the agreement is that the employment of employees are through the respective unions affiliated with the American Federation of Labor.

(Testimony of Thomas A. Rotell.)

Q. I mean, at the time that he signed the agreement was any—did he ask for any evidence that the Council represented the majority of the employees at the plant?

A. At the time of signing the agreement it was stipulated there were no employees, that they were seeking to hire employees.

Q. That is Respondent's Exhibit 1?

A. Yes, sir.

Q. And was any evidence shown to Mr. Lehaney or Mr. Graham or anybody on behalf of the Respondent, that the Council represented the majority of the employees at the plant?

A. Yes, sir——

Q. When they signed the master agreement?

A. There was no evidence shown that we represented any employee in the plant. We showed them that we represented [188] the crafts that would be necessary to be engaged to man his yard.

Trial Examiner Myers: Any other questions?

Mr. Royster: Yes.

Cross Examination

Q. (Mr. Royster): Did Mr. Graham make any statement in your presence with respect to authorizing Mr. Lehaney to sign an agreement?

A. Yes, sir.

Q. And was this—when did he make this statement?

A. January the 4th. I asked the question point blank if he had the authority to represent the firm, and the answer was in the affirmative.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: You mean Lehaney?

The Witness: Yes, sir.

Q. (By Mr. Royster): Did Mr.—did not Mr. Graham say at that time that Mr. Lehaney was then and there being authorized to sign an agreement?

A. Yes, sir.

Q. When Mr. Lehaney signed this agreement, as you testify, on the 2nd day of January, had you been advised by Mr. Graham that Lehaney had authority to sign such an agreement?

A. I didn't know that Mr. Graham existed on January the 2nd, outside of his name being mentioned through the firm's name, Graham Ship Repair.

Q. Do you know how Mr. Lehaney happened to come to your office on the 2nd day of January? [189]

A. Mr. Lehaney came to the office prior to January the 2nd, came the previous week, and on account of the holidays, the holiday week end, didn't have much time to discuss business, had other appointments, and requested him to adjourn the following Monday.

Q. On the occasion of the first visit, did you speak to him, to Lehaney? A. Yes.

Q. And what did you discuss, what was your conversation?

A. The gist of the conversation was that he was requesting information as how to get man power in order to operate a yard. I was surprised when he made the statement, I asked him what yard he was interested in, and he told me that he was the Labor

(Testimony of Thomas A. Rotell.)

Relations representative for a Graham Ship Repair. Well, that was the first I heard that the firm was going to start in the bay area. I'm familiar with all the firms, shipyards in the area, and that was a new one, and I asked him several questions. He also asked me several questions relative to the man power in the crafts, and I stated to him that we are under no obligation to the Graham Ship Repair to furnish any employees due to the man power shortage, that we had contracts with various shipyards in the area that we were obligated to supply man power, and unless he signed an agreement with the Council in toto for the A.F.L. unions, that we're under no obligation to furnish man power.

Q. Was your statement, sign an agreement in total, did you say? [190]

A. In total for all crafts affiliated with the Metal Trades Council.

Q. Just what did you mean by that statement?

A. I meant that any craftsmen that were to be engaged by the Graham Ship Repair Company would have to be members of the respective American Federation of Unions, including the machinists.

Q. Did you specifically state that you meant to include machinists?

A. That was stipulated time and time again.

Q. When you had your meeting with Mr. Graham and Mr. Lehaney on January the 4th, you stated that after a meeting of various crafts, a sub-committee was appointed?

A. Yes, sir.

(Testimony of Thomas A. Rotell.)

Q. Was there any representative of the International Association of Machinists on that subcommittee? A. Yes, sir.

Q. Who was that? A. Mr. Truax.

Q. And what office or position does he occupy?

A. International representative, that is all I know.

Q. International representative of the International Association of Machinists? A. Yes.

Q. Did you tell Mr. Graham or Mr. Lehaney what the situation was with respect to machinists at Moore Shipyard, for example?

A. Both representatives, Mr. Graham and Mr. Lehaney, were familiar with the situation as existing in the Oakland area. [191]

Q. How do you know they are familiar with it?

A. By their statements.

Q. And what were their statements?

A. Well, during the course of discussion it was developed that some work might be necessary to be moved from their yard to one of the other yards where Mr. Smith had the machinists, and they knew that there might be the possibility of work stoppages, and so forth, in the event that he was not employing machinists from 1304, we tried to clarify in his mind that we didn't think that such a condition would exist, that the amount of work that he would have to send into those yards, I couldn't see in my opinion how any work stoppages could be brought about through that affecting Moore Dry

(Testimony of Thomas A. Rotell.)

Dock, General Engineering, or United, or any other firm where the work might have went.

Q. Well, in naming those other firms, are you naming firms where the machinists are represented by Local 1304? A. That is right.

Q. Mr. Rotell, is the Bay City Metal Trades Council party to a contract with Judson-Pacific War Industries covering the employees of the yard Mr. Graham now operates?

A. The Bay City Metal Trades Council has an agreement with the Judson-Pacific War Industries covering all their yards on the Alameda side. I think there was four yards in total.

Q. And under that agreement, did Bay City Metal Trades represent machinists?

A. It did not.

Mr. Royster: I believe that is all. [192]

Trial Examiner Myers: Any questions, Mr. Stimmel?

Redirect Examination

By Mr. Stimmel:

Q. Mr. Rotell, I believe I understood you to say that at this conference on January the 2nd, you felt you were under no obligations to Graham to furnish any men, any machinists, or any men whatsoever until they had signed a contract with your organization? A. Correct.

Q. Mr. Rotell, did you ever have a contract of any kind with the Walter W. Johnson Company?

A. Yes.

(Testimony of Thomas A. Rotell.)

Q. And what did that cover, what yards?

A. The small yard that was vacated by the Pacific Bridge Company.

Q. That is not yard No. 2 at 501 First Street in Oakland; that is in Alameda, is it not, that Pacific Bridge, Mr. Janigian, or you probably know, or Mr. Graham, you know?

Mr. Graham: That is right.

Q. (By Mr. Stimmel): This yard is at 501 First Street, Oakland.

A. The Walter Johnson yard agreement was signed and the address given was their office here in San Francisco, and in parenthesis, covering Alameda yard.

Q. Then you did not have a contract with the Walter W. Johnson Company with regard to yard No. 2, this particular yard which is now known as the Graham Yard? A. No, sir.

Mr. Stimmel: That is all. [193]

THOMAS A. ROTELL,

a witness recalled by and on behalf of Bay Cities Metal Trade Council, A. F. of L., having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Janigian:

Q. Mr. Rotell, you're the Assistant Secretary of the Bay Cities Metal Trades Council?

A. Assistant to the Secretary.

(Testimony of Thomas A. Rotell.)

Q. Assistant to the Secretary? A. Yes.

Q. And you have held that position for approximately how long?

A. Oh, I would say October, 1942.

Q. And prior to that were you a delegate to the Bay Cities Metal Trades Council?

A. For about fifteen years. [195]

Q. You're a member of the Molder's Union, are you? A. I am.

Q. Have been for how many years?

A. It will be twenty years in July.

Q. The Bay Cities Metal Trades Council has been in existence approximately how long, Mr. Rotell, if you know?

A. Well, I know it was prior to the establishment of the Metal Trades Department, which was in 1909, I would say around 1900, 1901.

Q. And it has been continuously in existence ever since? A. It has.

Q. It has as its affiliated unions what type of unions, I mean what organizations?

A. Organizations whose membership are engaged in the metal industry.

Q. And what is the territorial jurisdiction of the Bay Cities Metal Trades Council?

A. The San Francisco Bay area.

Q. Also cover tributaries?

A. The tributaries, such as the Sacramento River, the San Joaquin River.

Q. I'll ask you whether or not the Bay Cities

(Testimony of Thomas A. Rotell.)

Metal Trades Council acts on behalf of its affiliated unions in matters of collective bargaining?

A. It does.

Q. And has it so acted during the past several years, or many years? A. It has. [196]

Q. Has the Bay Cities Metal Trades Council any collective bargaining agreements with shipyards in the San Francisco Bay area?

A. It has.

Q. Will you give us the names of the shipyards that the Bay Cities Metal Trades Council has collective bargaining agreements with?

A. Do you want all of them?

Q. Well, name them, yes, it won't take long.

A. The Permanente Metals, yards No. 1 and 2 in Richmond; the Kaiser Cargo Company, Kaiser, Inc., that is Richmond yards. The Moore Dry Dock Company; General Engineering Company, United Engineering Company, Pacific Coast Engineering Company, Pacific Dry Dock Company, American Ship Corporation, Hurley Marine Works, Marine Ship Corporation, Western Pipe and Steel, the General Engineering Company of San Francisco, United Engineering Company, San Francisco; Matson Navigation, San Francisco; H. E. Parsons Engineering Company; the Bay Salt Rock Company, Napa; which is engaged in ship construction; the Pollock Stockton Ship Building Company, Stockton; Comberg and Sons, Stockton; Stevens Bros. in Stockton; C. W. Wood, Stockton; Higginbottom Bros., in Stockton; Gemlin Chem-

(Testimony of Thomas A. Rotell.)

ical Company, San Francisco. Might be a couple of other minor ones.

Q. Bethlehem Steel Company, San Francisco.

A. Bethlehem Steel Company, San Francisco.

Q. Western Pipe and Steel Company, South San Francisco? A. I mentioned that, yes.

Q. Now, other than the Bethlehem Steel Company Ship Repair Yard in Alameda County and the Bethlehem Alameda Shipyards in Alameda County, do you know of any shipyard in the San Francisco Bay area which does not have collective bargaining contract with the Bay Cities Metal Trades Council? A. I know of none.

Q. And the contract signed by these various shipyards are of a uniform nature, or do they differ?

A. They are all of a uniform nature, the Pacific Coast Master Agreement.

Q. I see. Now, Mr. Rotell, you said in your testimony a few minutes ago that you first met Lehaney the last week of December, 1944, I mean in connection with this transaction. A. Yes.

Q. I presume you knew Mr. Lehaney prior to that time? A. For several years.

Q. And where did you see Mr. Lehaney?

A. In the offices of the Bay City Metal Trades Council.

Q. Had he made an appointment to see you, or did he just walk in?

A. I was out that day, and when I came back, there was a message on my desk that a Mr. Le-

(Testimony of Thomas A. Rotell.)

haney was coming up to the office, one of the girls took the message.

Q. And did Mr. Lehaney talk to you in the presence of any one else?

A. In the presence of Mr. Wynn. [198]

Q. (Mr. Janigian): Did he say whom he was representing?

A. When I asked him who, he told me the name of the firm, Graham Ship Repair.

Q. Graham Ship Repair Company. Did he tell you what his position was with the Graham Ship Repair Company?

A. Labor Relations Manager.

Q. And what did he say then, and what did you say, tell us?

A. In the course of the conversation he was requesting information on how to get manpower to man that firm, and questions that he asked, I answered.

Q. I see. And what did you say as to how he could get manpower?

A. I told him the only way that we'd be obligated to furnish manpower would be for he or his firm signing the master ship repair agreement, then we would be in a position to furnish manpower to him.

Q. Well, did he tell you the type of work that the Graham Ship Repair Company was to engage in?

A. Yes. [199]

Q. What type of work was that to be?

A. He stated to me at the time that they had

(Testimony of Thomas A. Rotell.)

about—well, he enumerated the class of work that they were going into, and stated that they had on the line about fourteen or fifteen tugs, some landing barges, and other types of vessels there to repair.

Q. Did he say that the firm was going to do any new ship construction work? A. No.

Mr. Sapiro: He didn't say that, or he said they were not. Pardon the interruption.

Mr. Janigian: No, that's all right.

Q. (By Mr. Janigian): Did he say that the firm was or was not to engage in new ship construction?

A. New ship construction was not even discussed.

Q. Well, what did he say was to be the firm's business? A. Ship repair.

Q. Ship repair?

A. For the United States Navy.

Q. Now, then, you have seen Respondent's No. 1, the agreement dated January 2nd, 1945. Was this document prepared in your office?

A. It was.

Q. At that time?

A. On January the 2nd.

Q. Who prepared it?

A. One of the girls in the office.

Q. I see. And you testified Mr. Lehaney signed it? [200] A. In the office.

Q. Now, I want to bring to your attention the statement in this agreement, or rather reference in

(Testimony of Thomas A. Rotell.)

this agreement of the Bay Cities Metal Trades Council ship repair agreement attached hereto. Now, was there anything attached to this document? A. There was.

Q. By the way, was there a duplicate original of Respondent's No. 1 that was signed by Mr. Rynn and yourself, and by Mr. Lehaney?

A. There was.

Q. And who took that duplicate original?

A. Mr. Lehaney.

Q. Did it also have the seal of the Council?

A. It did.

Q. And I'll ask you whether there was or was not attached to that duplicate original this copy of the Bay Cities Metal Trades Council ship repair agreement?

A. There was, I stapled it on myself.

Mr. Janigian: I wish to have this marked as Council's Exhibit No. 1 for identification.

(Thereupon the document above referred to was marked Council's Exhibit No. 1 for identification.)

Q. I show you, Mr. Rotell, Council's Exhibit No. 1 for identification, and ask you to inspect that document, and tell me if that is a true copy of the document which was attached to the duplicate original of Respondent's No. 1?

A. It is. [201]

Q. And given to Mr. Lehaney?

A. It's identical.

(Testimony of Thomas A. Roteli.)

Mr. Janigian: I wish to offer this Council's Exhibit No. 1 for identification in evidence.

Trial Examiner Myers: Any objection?

Mr. Royster: I'd like Counsel to state the purpose for which that Exhibit is offered.

Mr. Janigian: Well, the purpose is to show just what the agreement was that the Graham Ship Repair Company entered into. We only have this letter which refers to a ship repair agreement, and we want to show that the copy that Mr. Graham's representative had with him had this copy attached. It's obvious, the purpose is very obvious, if you want the agreement, the agreement is this document, plus this agreement which was attached thereto.

Mr. Royster: The reason for my question is this: That the complaint in this case does not attack the agreement as such, only to the extent that it may purport to cover machinists. I wonder if Mr. Janigian or the witness could point out in what respect that agreement purports to cover machinists.

Mr. Janigian: Well, it covers all employees.

The Witness: I can answer that.

Trial Examiner Myers: Just a minute now.

Mr. Royster: Unless it can be shown that this agreement purports to cover machinists in this case, I'll object to its admission.

Trial Examiner Myers: He's only offering this agreement, [202] as I understand, to show what was attached to Respondent's Exhibit No. 1, is that right?

Mr. Janigian: That is right.

(Testimony of Thomas A. Roteli.)

Trial Examiner Myers: You're not offering it for any other purpose?

Mr. Janigian: No; I mean of course, if it's in evidence, it's in evidence for all purposes, but we have Respondent's Exhibit No. 1, and we want to show that Respondent's Exhibit No. 1 had a very important attachment, the agreement itself.

Mr. Royster: Well, finally, in this case we come down to this question: Were the termination of the employees, these fourteen C. I. O. employees, on the 24th of January validated by a closed-shop agreement? If the closed shop agreement covers machinists, that is one thing. If it doesn't cover machinists, it has no bearing on the discharges.

Mr. Janigian: Well, you're attacking an agreement, and this is the agreement, Counsel, that you are attacking, because what was signed two weeks later is the exact duplicate of the agreement which was signed.

Mr. Royster: Well, I have no doubt that is so.

Trial Examiner Myers: You object to the paper going into evidence?

Mr. Royster: Yes.

Trial Examiner Myers: Any other objections?

Mr. Sapiro: Well, I object to it on the ground that it's incompetent for any purpose in this case, because it's—— [203]

Trial Examiner Myers: The contract is not going in for any other purpose, as I understand, except to show——

Mr. Sapiro: What was signed that day.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: What was attached to Respondent's Exhibit No. 1, am I right?

Mr. Janigian: That is right.

Trial Examiner Myers: I'll overrule the objections and receive the booklet in evidence, and ask the reporter to please mark it as Council's Exhibit No. 1.

(Whereupon, the document heretofore marked Council's Exhibit 1 for identification was received in evidence.)

Q. (Mr. Janigian): Mr. Rotell, following the signing of Respondent's Exhibit No. 1, did you issue any instruction to any of the unions affiliated with the Bay Cities Metal Trades Council in Oakland or Alameda, with respect to the dispatching of men to the Graham Ship Repair Yard?

Mr. Sapiro: Object to it as immaterial, as far as the 1304 is concerned, it would be hearsay and not binding on 1304.

Trial Examiner Myers: Overruled.

The Witness: I wouldn't state that I notified all unions, but I did report to the meeting of the executive board of the Bay Cities Metal Trades Council on January the 9th that we had concluded an agreement with the Graham Ship Repair Company, and instructed the representatives present to supply manpower upon requisition from the firm.

Trial Examiner Myers: By the way, did either Lehaney or Mr. Graham tell you that there was some understanding [204] or instructions or agree-

(Testimony of Thomas A. Rotell.)

ment with the United States Navy to hire only employees who formerly worked at Judson?

The Witness: No.

Trial Examiner Myers: They never told you that?

The Witness: No, sir.

Q. (By Mr. Janigian): Now, Mr. Rotell, following the signing of Respondent's Exhibit No. 1, did Mr. Graham or Mr. Lehaney make any request to you, as a representative of the Council, for any mechanics to be dispatched to the yard of the Graham Ship Repair Company.

Mr. Sapiro: Object to the question, because the word "mechanics"—

Mr. Janigian: Workmen.

Trial Examiner Myers: You withdraw the objection?

Mr. Sapiro: Yes, I'll withdraw the objection.

The Witness: On January the 4th I asked the direct question of the representatives of the firm how many machinists were needed immediately in order to start operations, and the answer was that they had to have twenty by the following Wednesday.

Q. (By Mr. Janigian): Now, was there any requisition placed with the Council between January 2nd and January 4th for the dispatching of any workmen to the Graham Ship Repair Yard?

A. With the Council itself, no. The requisitions are placed with the direct crafts where the requisitions are to be filed.

(Testimony of Thomas A. Rotell.)

Q. Were such requisitions placed, to your knowledge?

Mr. Sapiro: Objected to as calling for a conclusion of the witness, and hearsay. [205]

Trial Examiner Myers: Overruled. He might have seen the original requisitions, and they might have been signed in his presence.

The Witness: The only information I have on that is the reports made by the representatives of the various organizations that did dispatch men to the firm.

Mr. Sapiro: I'll renew my objection, and ask that the answer be stricken.

Trial Examiner Myers: Overruled.

Q. (By Mr. Janigian): And do these reports show that any men had been dispatched between the 2nd and the 4th to the Graham Ship Repair Yard?

A. I can't answer that, to my knowledge.

Q. You don't know of your own knowledge?

A. No.

Q. You're testifying on the basis of information. Did they give you any information as to whether or not any men were dispatched?

A. I know men were dispatched, but the exact dates when the requisitions were first sent in, I cannot answer.

Q. Now, coming to this meeting of January 4th, this meeting was held where?

A. In Room 205 of the Labor Temple, 16th and Capp Streets.

(Testimony of Thomas A. Roteil.)

Q. And you testified that Mr. Graham was present as well as Mr. Lehaney and representatives of the various unions affiliated with the Council, is that right?

A. I testified various representatives of the international unions. [206]

Q. International unions? A. Yes.

Q. And did you and Mr. Wynn have a conference with Mr. Graham and Mr. Lehaney prior to this meeting that was had with representatives of the various international unions?

A. There was no meeting that morning, but Mr. Graham and Mr. Lehaney both appeared in the offices of the Council, in Room 305, that is the floor above, and we told them to sort of put the—cool their heels while we held our meeting, and they sat in the offices pending the completion of the meeting.

Q. Following that there was this meeting of the sub-committee?

A. Following the meeting of the full committee of the Oakland representatives.

Q. I see. There was a meeting of a sub-committee with Mr. Lehaney and Mr. Graham, is that right?

A. In Room 205 a meeting was held with Mr. Graham and Mr. Lehaney with a committee that was appointed from the general committee meeting that was held that morning.

Q. Well, will you tell us what Mr. Lehaney said, and what Mr. Graham said at this meeting?

(Testimony of Thomas A. Rotell.)

A. We discuss——

Q. Tell us what he said, and if you can't recall the exact words, of course, just tell us the substance of what they said; what were they there for, what did they ask, or what information did they seek; just tell us what happened?

A. They wanted to get started. [207]

Q. Yes. A. To operate.

Q. Yes.

A. And the manpower was the general discussion.

Q. Was there any discussion first of all of the agreement which Mr. Lehaney had signed on behalf of the Graham Ship Repair Company two days before?

A. There was discussion on various phases of the agreement.

Q. What was said with respect to that agreement that was signed two days before?

A. Well, the main topic of discussion was the machinists question, the furnishing of machinists.

Q. Well, was there any mention made by Mr. Lehaney or you or Mr. Wynn or any of the others present with respect to the signing of an agreement two days before? A. No.

Q. Well, what did Mr. Lehaney and Mr. Graham say; what were they there for?

A. I think I stated that they were there to discuss the manpower in order to start operations.

Q. And what did they say in that connection?

A. Well, I stated that the main topic of dis-

(Testimony of Thomas A. Rotell.)

cussion was the furnishing of machinists under the terms of the agreement, and we assured them that we could furnish them all the machinists that were necessary. I also, during the course of the conversation, and supplying this manpower who was in authority in order to sign the requisitions, and the answer was that, and the agreement arrived at was that all requisitions [208] would be signed by Raymond Lehaney for the various crafts. I also distinctly asked if Mr. Lehaney was to be the official representative in order to clarify my mind of the firm, and the answer was that Mr. Lehaney would handle the Labor Relations and had authority for all matters concerning labor relations for Graham Ship Repair.

Q. Now, what was said with respect to machinists, as to the number. Was there any discussion as to the number of machinists which would be required?

A. We went into that quite at length, and we tried to ascertain as to what would be the peak as far as machinists being hired there would be, and of course we arrived at a figure that we reached their peak by their lifting, the raising of the manpower, that would require around 150 machinists, that is when they reached the peak of about 800, 850 employees.

Q. 150 machinists. A. Yes.

Q. Well, did Mr. Graham or Mr. Lehaney ask that the Council supply any given number of machinists on the 4th of January?

(Testimony of Thomas A. Rotell.)

A. I stipulated that already, that a request was made that we furnish two machinists immediately.

Q. I see.

A. And not later than Wednesday in order so that they could start their operations functioning on a paying basis.

Trial Examiner Myers: You mean Wednesday of the following week? [209]

The Witness: Wednesday of the following week, yes.

Q. (By Mr. Janigian): What was said with respect to the Council furnishing other mechanics or other craftsmen?

A. There was no amount of other craftsmen specified.

Q. I see. Now, following this meeting of the 4th, do you know whether or not machinists were dispatched to the Graham Ship Repair Yard by a union affiliated with the Bay Cities Metal Trades Council?

A. The reports in the office were that the machinists had on several occasions dispatched machinists to the Graham Ship Yard.

Trial Examiner Myers: You mean the I. A. M. machinists?

The Witness: I. A. M., Local 284.

Q. (By Mr. Janigian): Were these reports written reports, Mr. Rotell, or oral reports?

A. They were made to me personally by telephone.

Q. Do you know whether or not any A. F. L.

(Testimony of Thomas A. Rotell.)

machinists, who applied for work at the Graham Ship Repair Yard, were actually employed between the 4th and the 25th of January?

A. Will you repeat the question?

Mr. Janigian: Will the reporter please read the question to the witness?

(The question referred to was read by the reporter.)

Mr. Sapiro: I think that calls for hearsay testimony.

Trial Examiner Myers: Overruled.

The Witness: I can't answer that to my own knowledge.

Q. (By Mr. Janigian): I see. Following this meeting of the [210] 4th was there a further meeting with Mr. Lehaney or Mr. Graham, Mr. Rotell?

A. Subsequent meetings were held right on through January and February.

Q. Now, was there another meeting or conference held on or about the 16th of January?

A. I'd have to see the calendar on that one and see what day it was. Yes.

Q. Yes.

A. I think that was the exact date, January the 16th.

Q. And what meeting was held on January the 16th?

A. A meeting was held in the library of the Labor Temple on that date with representatives of the firm, and——

Mr. Sapiro: I would ask the names be given.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: Yes, give us the names.

The Witness: The Graham Ship Repair Company—well, wait a minute, you want names—on January the 16th there was representing the firm Lehaney, Mr. Graham, Mr. McDonald, the general manager, A. T. Wynn, secretary of the Council, Mr. O. F. Reim, an international representative, electrical workers; Amos W. Doane, international representative machinists, No. 24; J. D. O'Brien, Welder's Local 661; W. F. McConnell, International Representative Boiler Makers; P. W. Griffith, I. A. M. No. 284; Pete Taylor, Machinists Welders 1330; M. E. Thompson, I. A. of M.; Ernest Lohr, Boiler Makers No. 39.

Q. (By Mr. Janigian): Do you have very many more?

A. No, we're getting on some bigger names up here, as I go [211] up. Al Yatts and Luther Morris of the Steam Fitters, Joe Roberts and Drew Chionio of the Ship Fitters, Local 9; Casey Apperson, International Association of Machinists; Don Cameron, Carpenters International Union; O. K. Mitchell, Laborers 886; M. H. Stafford, Executive Secretary Pacific Coast District Metal Trades Council; Anthony Ballerini, Vice President Metal Trades Council, and Marry Bailey, representative of the Shipwrights and Joiners. They were present at that meeting.

Q. All right. Will you tell us what happened, or what was said and done at that meeting?

(Testimony of Thomas A. Rotell.)

A. At that meeting it was called for the purpose of discussing violations——

Mr. Sapiro: Might I suggest that the question was, what was said, not the purpose of the meeting.

Trial Examiner Myers: Tell us what was said, and by whom?

Q. (By Mr. Janigian): Tell us what was said, Mr. Rotell?

A. I thought that is what I started to do. I called the meeting for the purpose of discussing the violation of the agreement, namely, not hiring the machinists that were dispatched there by Local 284.

Q. Well, did you make that statement at that meeting? A. Yes.

Q. All right. Were Mr. Graham, and Mr. Lehaney present?

A. Mr. Lehaney and Mr. Graham and Mr. McDonald, their general manager, was present.

Q. This was at the meeting where all there people were present? [212] A. Yes.

Q. And then what else did you say with respect to any violation?

A. Well, the whole gist of the conversation or the meeting was that we expected the contract to be lived up to.

Q. By the way, at that meeting had there been another contract signed, I mean between the Graham Ship Repair Company and the Bay Cities Metal Trades Council prior to that meeting?

(Testimony of Thomas A. Rotell.)

A. I don't get what you mean by another contract.

Q. Well, I have—I'll show you—will you please mark this as Council's No. 2 for identification.

(Thereupon the document above referred to was marked Council's No. 2 for identification.)

Q. (By Mr. Janigian): Mr. Rotell, I show you Council's Exhibit for identification No. 2, and ask you to look at it, and tell me what that is.

A. I have in my hand the exact replica of the ship repair agreement by the Bay City Metal Trades Council, the international unions and the employer, whose signature is attached hereto, which is the official agreement of the Bay City Metal Trades Council signed by the Graham Ship Repair Company.

Trial Examiner Myers: When was that signed?

Q. (By Mr. Janigian): When was that signed?

A. This agreement was signed upon delivery from the printer. I think I have it in the record that on January 2nd we signed a stipulation and attached the same agreement in smaller form pending the receipt of the agreements [213] with the signature page contained therein.

Trial Examiner Myers: Well, approximately when was this Exhibit 2 signed?

The Witness: I would say that was signed on January the 9th, January the 9th, on a Tuesday.

Q. (By Mr. Janigian): That would be approximately a week later?

A. A week later.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: Exactly a week later?

Q. (By Mr. Janigian): Exactly a week later?

A. The reason I'm sure of the date, it was the Executive Board meeting, and the president was present at the meeting, and he attached his signature on that day.

Mr. Janigian: At this time, Mr. Trial Examiner, I wish to offer Council's Exhibit No. 2 in evidence, but ask leave to substitute a copy.

Trial Examiner Myers: Any objection?

Mr. Royster: With the understanding that this is an exact duplicate of the agreement signed January the 2nd, I have no objection.

Mr. Janigian: This is the exact duplicate.

Mr. Sapiro: Who was it signed by?

Mr. Stimmel: No objection on our part.

Mr. Sapiro: The contract is identical, but the signatures are different than that contained in Respondent's Exhibit 1.

Trial Examiner Myers: Very well.

Mr. Sapiro: On behalf of the Council.

Mr. Janigian: That is right, Bartholomew signed as [214] president.

Trial Examiner Myers: There being no objection, the pamphlet is received in evidence, and I'll ask the reporter to please mark it as Council's Exhibit No. 2.

(Whereupon the document heretofore marked Council's Exhibit No. 2 for identification was received in evidence.)

(Testimony of Thomas A. Rotell.)

COUNCIL'S EXHIBIT No. 2

AGREEMENT

This Agreement entered into by and between the Bay Cities Metal Trades Council and International Unions with the Employers whose signatures are attached hereto.

1. This agreement made this 1st day of April, 1940, shall remain in force until April 1, 1941, and shall be deemed renewed for successive periods of one (1) year unless at least thirty (30) days prior to April 1st of any year, either party shall give written notice of termination to the other. If conferences are desired, they will be held within ten (10) days immediately following the receipt of such notice.

* * * *

13. It is hereby agreed that all Employees covered by this agreement will be members of their respective unions. In the employment of new employees, the members of the unions signatory to this agreement will be given preference, providing the unions will supply competent men. In the event they are unable to supply the required help, Employees hired, before starting work, must secure a clearance through the unions who have jurisdiction over the work to be performed.

* * * *

15. It is agreed and understood that the rates of pay and working conditions covered by this agreement shall apply to new ship construction during the life of this agreement. However, the Employer,

(Testimony of Thomas A. Rotell.)

prior to bidding on new ship construction shall advise the Unions signatory to this agreement through the Bay Cities Metal Trades Council and a conference to be arranged for the purpose of discussing probable changes in wages and conditions for the construction period after the expiration of this general agreement.

* * * *

Signed by the Employers:

GENERAL ENGINEERING & DRY
DOCK CO.,

By F. H. Fox.

COLUMBIA MACHINE WORKS,

By L. K. Siversen.

PACIFIC DRY DOCK & REPAIR
COMPANY,

By T. Crowley.

UNITED ENGINEERING COM-
PANY, LTD.,

By R. E. Christy.

MOORE DRY DOCK COMPANY,

By Jos. A. Moore, Jr.

MATSON NAVIGATION CO.,

Maintenance Department,

By Carl E. Petersen.

Signed by the Committee from the Bay Cities
Metal Trades Council of the A. F. of L. and Unions
Who Are Party to the Agreement:

COUNCIL,

E. Rainbow, President.

(Testimony of Thomas A. Rotell.)

BAY CITIES METAL TRADES
COUNCIL,

A. T. Wynn, Secretary.

BAY CITIES METAL TRADES
COUNCIL UNIONS,

By E. Rainbow, Bus. Rep.

Boilermakers Local No. 6

By Andrew Chionino, Bus. Rep.

Boilermakers Local No. 9

By Fred Davis, Bus. Rep.

Boilermakers Local No. 39

By J. J. Ironsides, Bus. Rep.

Boilermakers Local No. 681

By F. H. Weibel, Bus. Rep.

Blacksmiths Locals

By O. J. Babich, Bus. Rep.

Ship Painters Local No. 961

By

Caulkers Local No. 554

By George Sanfacon, Bus. Rep.

Carpenters Local No. 1149

By John A. Tomberg, Bus. Rep.

Marine Waysmen Local No. 2116

By Frank Burk, Bus. Rep.

Sheet Metal Workers Locals

By Charles Foehn, Bus. Rep.

Electrical Workers Locals

By A. F. Bartholomew, Bus. Rep.

Shipyard Laborers No. 886

By George W. Wride,

Steamfitters Local No. 590

By

(Testimony of Thomas A. Rotell.)

* * * *

(Note: The Exhibit sets forth classifications and hourly wage scales for the following occupations: Boilermakers, Blacksmiths, Electrical Workers, Steamfitters, Painters, Carpenters, Laborers, Operating Engineers, and Sheet Metal Workers, and further that the agreement was amended from time to time, in respects not material here.)

* * * *

AGREEMENT

This Agreement, dated April 1, 1941, between Employers signatory hereto and engaged in ship repairs on the Pacific Coast, and the Metal Trades Department of the American Federation of Labor, the International Unions signatory hereto, the Pacific Coast District Metal Trades Council and its affiliated Local Metal Trades Councils;

Witnesseth

1. Scope of Agreement—The terms hereinafter expressed shall be incorporated in contracts to be executed by all employers parties hereto with the Local Metal Trades Councils having jurisdiction of the port in which such employer is located.

2. Wages—The wage scales for ship repair work on the Pacific Coast are hereby fixed at the scales set forth in Schedule "A" of the Master Contract covering new ship construction, plus 11.6%. Where application of such percentage results in a split cent, the hourly rate shall be determined by eliminating all fractions less than one-half cent and by taking

(Testimony of Thomas A. Roteil.)

the next higher cent where the fraction is one-half cent or more.

All overtime shall be double time.

Leading men shall be compensated in accordance with local practice, but in no case be less than fifteen cents per hour over the wage of the craft they are supervising.

* * * *

4. Duration of Agreements—The duration of the agreements shall be for the period of two years or for the period of the National Emergency as proclaimed by the President of the United States—or whichever is longer, and said agreements shall continue in force and effect thereafter from year to year unless either party shall desire a change, in which event, the party desiring the change shall give the other party notice in writing of the proposed change or changes at least thirty days prior to the expiration of such year; it being expressly understood, however, that on the demand of Labor thirty days prior to April 1, 1942, and on demand of either party every six months thereafter, the wage scales in said agreements shall be reviewed by the parties. If the cost of living, as shown in "Index Numbers of Cost of Goods Purchased by Wage Earners and Salaried Workers in Large Cities," published by the United States Bureau of Labor Statistics, United States Department of Labor, shall have changed at the time of the review from the cost of living at the time of the making of this agreement by five per cent or

(Testimony of Thomas A. Rotell.)

more, the wage scales shall be correspondingly adjusted. In the event the necessary data is not obtainable at the date of review, it may be secured at a later date and the wage adjustment shall be made effective retroactively to the date of review.

* * * *

In Witness Whereof, the parties hereto have hereunto set their respective names through their respective authorized officers or representatives.

Employers:

METAL TRADES COUNCILS:

Original signatures in office files.

(Note: Machinists do not appear as signatory to the Supplemental Agreement.)

* * * *

RESOLUTION

Adopted at the Pacific Coast Zone Shipbuilding Stabilization Conference, Palace Hotel, San Francisco, California, October 17, 1944, amending the Amendments to the Pacific Coast Ship Repair Agreement.

Resolved, by the representatives of Labor, Management, and Government, parties to the Amendments of the Pacific Coast Ship Repair Agreement, in attendance at the Pacific Coast Zone Shipbuilding Conference, this seventeenth day of October, 1944, that, subject to the approval of the National War Labor Board, the Amendments to the said Pacific Coast Ship Repair Agreement, adopted at the Pacific Coast Ship Repair Conference, at San Fran-

(Testimony of Thomas A. Rotell.)

cisco, California, commenced May 29, 1942, be and hereby are amended as follows:

By amending the section contained in said Amendments entitled, "Scope of Repair Work" to read as follows:

"Scope of Repair Work:

"Conversion work on a 'new vessel' shall be deemed new construction work.

"A 'New vessel' shall be construed to be any newly constructed floating structure prior to its completion and delivery to the owner.

"Repair work shall be deemed to cover all work on vessels after completion and delivery to the owner but shall not include substantial rebuilding of a vessel prior to completion and delivery to the owner in order to adapt it to a use different from that for which it was previously planned, and shall likewise not include, when performed in a yard doing solely new construction work, any work performed on a vessel after delivery to the owner but prior to completion of a voyage in the service for which it was built.

"When a new vessel is placed in or on drydocking facilities which are located in or are under the control of a ship repair or combination yard for work which by its nature requires the use of drydocking facilities, all work essential to accomplishing such purpose performed in or on such drydocking facilities shall be repair work.

"Nothing herein shall be construed to prevent the

(Testimony of Thomas A. Rotell.)

employer from continuing to perform new construction work on said vessel while in drydock.”

Resolved Further, that the effective date of these Amendments shall be the seventeenth day of October, 1944.

Resolved Further, that the Chairman of the Shipbuilding Stabilization Committee is hereby authorized and directed to submit the above Amendments to the National War Labor Board for approval.

Shipbuilding Commission
National War Labor Board

November 6, 1944

In the Matter of: The Parties to the Pacific Coast
Master Agreement Covering New Ship Construction and to the Amendments to the Pacific Coast Ship Repair Agreement.
Case No. 25-2207-A.

RULING

By virtue of and pursuant to the authority vested in it by the National War Labor Board in its Directive Order of August 9, 1943, the Shipbuilding Commission, acting upon the request of the above-named parties, dated November 1, 1944, rules as follows:

I. The amendments to the Pacific Coast Master Agreement Covering New Ship Construction and the amendments of the Amendments to the Pacific Coast Ship Repair Agreement as adopted by resolution of the parties in conference in San Francisco on October 17, 1944, as hereby approved.

(Testimony of Thomas A. Rotell.)

II. This adjustment may be made effective as of October 17, 1944. It is recommended that any retro-active payment that may result from this Ruling be made in conformity with the policy of the National War Labor Board as stated in its resolution of April 2, 1943.

III. This Ruling conforms to the policies of the National War Labor Board based on Executive Orders Nos. 9250 and 9328, and the policy Directive of May 12, 1943, issued by the Director of Economic Stabilization.

WILLIAM H. McPHERSON, Public.

ELMO P. HOHMAN, Public.

LEE G. PAUL, Industry.

ROBERT G. HOWLETT, Industry.

LUCIEN KOCH, Labor.

EDWARD B. ROWAN, Labor.

Bay Cities Metal Trades Council

Main Office

Labor Temple, 2940 - 16th Street

Telephone Underhill 3055 and Market 1225

San Francisco 3, California

ACCEPTANCE OF AGREEMENT

It Is Mutually Agreed to by and Between the Employer signatory hereto, engaged in Ship Repair work in San Francisco Bay Area and the Bay Cities Metal Trades Council of the American Federation of Labor and its affiliated unions, that the 1940 Bay

(Testimony of Thomas A. Rotell.)

Cities Metal Trades Council Ship Repair Agreement
as amended shall remain in force and effect in ac-
cordance with the terms contained herein.

Dated this 2nd day of January, 1945.

GRAHAM SHIP REPAIR CO.,

Name of Firm

501 1st St., Oakland,

Address of Firm.

(seal) By RAYMOND H. LEHANEY,

Dis. Labor Relations.

BAY CITIES METAL TRADES
COUNCIL,

By A. T. WYNN,

Secretary.

By A. F. BARTHOLOMEW,

President.

Q. (By Mr. Janigian): Mr. Rotell, was there
a meeting had with Mr. Lehaney on the occasion
of the signing of Council's Exhibit No. 2?

A. I wouldn't call it a meeting. The agreements
arrived from the printer, and Mr. Lehaney hap-
pened in the office, and I gave him the copies to
sign.

Q. And the copies were signed in the office?

A. In the office.

Q. Of the Bay Cities Metal Trades Council?

A. Yes.

(Testimony of Thomas A. Rotell.)

Q. Was Mr. Lehaney given a duplicate original, I mean a signed copy of Council's Exhibit No. 2?

A. He was.

Q. Now, getting back to this meeting of the 16th; you said you were discussing violations of the agreement by the Graham Ship Repair Company. Now, was there any statement made by Mr. Graham on that occasion as to what his contention was, or what did he have to say? [215]

A. I don't recall the exact conversations.

Q. Well, do you recall the gists of them, what was said by you and every one else; tell us very briefly just what transpired at that meeting?

A. I stated that we called the meeting to register our complaint on the violations. Our information as reported to the Council was that the machinists were dispatching men to be hired and they were being turned away, and the purpose of the meeting was to rectify that situation.

Q. I see. Now, what was said on that—in that connection? I mean, you said you made a statement. Did any one else make any statements?

A. Well, several of those present made statements.

Trial Examiner Myers: All right, what did Graham, McDonald—

Q. (By Mr. Janigian) What did Graham say he would do, or Mr. Lehaney say he would do in that connection; what was their explanation?

Trial Examiner Myers: Did they say they'd rec-

(Testimony of Thomas A. Rotell.)

tify it, or did say that they wouldn't pay any attention to it, or what?

The Witness: I want to state that Mr. Lehaney stated that they will rectify the situation; that Mr. McDonald, their General Manager, was introduced to the group, because we questioned who had the authority there, Mr. McDonald, Mr. Close, or Mr. Lehaney, and it was borne out that Mr. McDonald was over Mr. Close, and what he said went.

Q. (By Mr. Janigian) And was there anything else said about that at that time? [216]

A. No. As I stated, the firms' representatives promised that the whole situation would be cleared up, and insisted again that machinists be dispatched down there, that they would be put to work, that they needed them bad.

Q. All right. Did you, following that meeting, contact the Machinists Local Union to have them dispatch machinists?

A. I didn't have to contact them, the representatives of the Machinists Local Union were present.

Q. Machinists to the Graham Ship Repair Yard would be dispatched from which local of the International Association of Machinists?

A. Local 284, Oakland.

Q. Following that meeting was there a further meeting with Mr. Graham or Mr. Lehaney?

Trial Examiner Myers: You mean with respect to machinists?

(Testimony of Thomas A. Rotell.)

Mr. Janigian: Yes, with respect to this controversy.

The Witness: Yes. I was pretty active on it practically daily following the situation up, with the result that another meeting was called January the 25th, and I would say approximately the same individuals present at that meeting, were present at the meeting of the 16th.

Q. (Mr. Janigian) You won't have to read their names.

A. With the addition of three other individuals.

Trial Examiner Myers: Representing the Unions?

The Witness: Representing the A. F. L. Unions, yes, sir. At that meeting Mr. Lehaney was there alone, Mr. Graham or any other representative of the firm was not with him.

Q. (By Mr. Janigian) I see.

A. That was held at 10 A. M. in the library of the Labor [217] Temple.

Q. And then what was done at that meeting?

A. We had the show down on the machinists situation.

Mr. Sapiro: I move that that be stricken out.

Trial Examiner Myers: Strike it out.

Q. (By Mr. Janigian) What was said; what did you say and what did they say, give us the conversations or the substance of the conversations?

A. The substance of the conversations were that they were going to fulfill their end of the contract by putting machinists to work.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: "They" you mean Graham?

The Witness: The Graham Ship Repair Company, or the Council would have to consider that their agreement had been abrogated and would be under no obligation to furnish any other craftsmen to them.

Q. (By Mr. Janigian) You say machinists, you mean A. F. L. machinists?

A. A. F. L. machinists.

Q. And what was said by Mr. Lehaney on that occasion?

A. Mr. Lehaney told us what was transpiring in the yard.

Trial Examiner Myers: Tell us what he said.

The Witness: Well, he stated that it was more of a jurisdictional dispute within the firms' supervision as to who was boss, who had the power to do this, and that, that he had the power, and what he said was going to go, so the proof of the pudding was that after the meeting of the 25th.

Mr. Sapiro: I move that that be stricken out.

Trial Examiner Myers: Strike it out. [218]

The Witness: He was the boss of the record.

Q. (By Mr. Janigian) Now, getting back to this alleged jurisdictional fight among the supervisory officials of the company, what did Mr. Lehaney say on the subject of the A. F. L. machinists not being employed in the yard?

A. Well, they tried to place the brunt—

(Testimony of Thomas A. Rotell.)

Q. No, what did he say, because otherwise Mr. Sapiro will object.

Mr. Sapiro: Oh, I haven't objected very much.

Trial Examiner Myers: What did he say, sound so says he wouldn't hire any A. F. L., and so and so says.

The Witness: The statement made by Mr. Lehaney were that the machinists superintendent and the hull superintendent would not allow A. F. L. machinists to go to work there. Them are the exact words.

Q. (By Mr. Janigian) Who was the hull superintendent? A. Mr. Close.

Q. And machinists superintendent was——

A. Gentleman by the name of Rogers.

Q. And what did Mr. Lehaney say he would do about that situation?

A. He said he's going to get it straightened out if it's the last thing he does.

Trial Examiner Myers: And when you told Lehaney that day that you would no longer be obligated to send any more A. F. L. craftsmen over to the Graham Ship Repair Company, what did you actually tell him?

A. I stated that unless he put machinists from the A. F. L. [219] to work that we would consider the agreement abrogated and would be under no obligation to furnish any other craftsmen.

Trial Examiner Myers: You mean in the future, or would you take out what you already sent there?

(Testimony of Thomas A. Roteli.)

The Witness: In the future, with the thought in mind that if we had demands from the other firms which we had contracts with and we had to supply man power, that we would withdraw our people and put them into firms where we had contracts.

Q. (By Mr. Janigian) What, if anything, was said with respect to C. I. O. machinists then working at the Graham Ship Repair Yard?

A. The information that was conveyed to the Council——

Q. No, what was said?

A. Was that there was no C. I. O. machinists working there. That is what they kept on telling us right along.

Q. Who said that? A. Mr. Lehaney.

Q. Said there were no C. I. O. machinists working there?

A. Right. Also, Mr. Batts, their bookkeeper or timekeeper, informed me that there were no C. I. O. machinists on the pay roll during all that entire time.

Trial Examiner Myers: You mean from January 2nd up to January 25th?

The Witness: I would say from about January the 5th up to that time.

Trial Examiner Myers: Up to the 25th?

The Witness: That is right. [220]

Q. (By Mr. Janigian) Did you phone Mr. Graham or Mr. Lehaney in connection with this business? A. Yes, several times.

Q. And did you discuss with Mr. Graham the

(Testimony of Thomas A. Rotell.)

question of the companies enforcing the agreement which it had signed with the Bay Cities Metal Trades Council?

A. Well, my conversation with Mr. Graham was on another line. The enforcement of the agreement was discussed mostly with Mr. Lehaney.

Q. I see.

A. And the only time Mr. Graham came into the discussions was where he was present at a meeting.

Q. I see. Was there a further meeting had with Mr. Graham after the 25th of January?

A. Yes, there was another meeting held on February the 15th, at 2 P.M. in the library.

Q. Well, I mean prior to the 26th.

A. Not to my recollection.

Q. On and after the 25th of January were A. F. L. machinists employed at the yard?

A. From the information the Council received, yes.

Mr. Janigian: Will you please mark this as Council's Exhibit for identification next in order.

(Thereupon the document above referred to was marked Council's Exhibit 3 for Identification.)

Q. (By Mr. Janigian) Mr. Rotell, I show you Council's Exhibit for identification No. 3, and ask you to identify this. [221]

A. That is the roster of the organizations affiliated with the Bay Cities Metal Trades Council.

Mr. Sapiro: I understand the purpose is to

(Testimony of Thomas A. Rotell.)

show that 1304 is not affiliated with the Bay Cities Metal Council, and I will so stipulate.

Mr. Janigian: I was joking with you. I wanted to show the affiliation of the Council.

Mr. Sapiro: Object to it as immaterial, and cluttering up the record.

Mr. Janigian: No, it's not cluttering up the record at all. I wish to offer this Council's Exhibit No. 3, a roster of affiliation of the Bay Cities Metal Trades Council, in evidence.

Trial Examiner Myers: Any objection.

Mr. Stimmel: No objection.

Mr. Sapiro: Objected to as immaterial.

Trial Examiner Myers: I'll overrule the objection and receive the paper in evidence, and ask the reporter to please mark it as Council's Exhibit No. 3.

(Thereupon the document heretofore marked Council's Exhibit No. 3 for identification was received in evidence.)

COUNCIL'S EXHIBIT No. 3

Council's Exhibit No. 3 contains the names and addresses of locals affiliated with the Bay Cities Metal Trades Council and in the City of Oakland, 26 locals are listed.

Q. (By Mr. Stimmel) Mr. Rotell, did you at any time discuss with Mr. Graham or Mr. Close or Mr. Lehancy the matter of passively allowing

(Testimony of Thomas A. Rotell.)

them to use the C. I. O. machinists after January the 2nd?

A. At the meetings that were held, yes, that was discussed. Mr. Graham specifically requested if we would not let him live up to all phases of the agreement except the clause which had to do with the machinists, and we told him absolutely not.

Mr. Royster: May I ask when this conversation was?

Trial Examiner Myers: Yes, fix the time.

The Witness: That was at the meeting of January the 25th.

Trial Examiner Myers: Well, Graham wasn't there, you said.

The Witness: Well, the 16th then, the meeting that Mr. Graham was there. There might have been another meeting in between those two. I couldn't find all my notes this morning.

Q. (By Mr. Stimmel) Mr. Rotell, didn't Mr. Lehaney or [223] Mr. Graham point out to you that it was necessary that they use C. I. O. machinists in that yard located on the estuary because of conditions that prevailed there, that they couldn't dry dock their boats, any boat that they had worked on, and they would be terribly interfered with by reason of that fact, and that you passively acquiesced in them using the C. I. O. machinists in the interval?

A. We were not concerned by any allegation as to what may happen in the dry docking of vessels, the Graham Ship Repair Company was in

(Testimony of Thomas A. Rotell.)

no position to dry dock it's own vessels, not having a dry dock. It was stipulated by the firm that the machinists work that they had to do was taken care of in the uptown shops, and the only work that would be involved in dry docking, would have to be sub-contracted not by them but by the Navy itself, that the Navy allocated the vessel to be placed in dry dock to a particular yard.

Cross Examination

Q. (By Mr. Sapiro) You have mentioned a list of repair yards which the Council has collective bargaining agreements with; among those you mentioned some in Alameda County, those are the—will you name those in Alameda County again—well, American Ship, for instance, you have a collective bargaining agreement with American Ship?

A. We have. [224]

Q. You don't supply any machinists to them?

A. That is right.

Q. You mentioned that you had a collective bargaining agreement with United in Oakland, Alameda County. A. I did.

Q. You don't supply any machinists to them, do you? A. That is right.

Q. You said you had a collective bargaining agreement with General Engineering in Oakland, and you don't supply any machinists to them?

A. That is right.

Q. The three that I have mentioned, those are all supplied by C. I. O. 1304?

(Testimony of Thomas A. Rotell.)

A. That is correct.

Q. You also mentioned that you had a collective bargaining agreement with Moore Dry Dock in Oakland?

A. That is right.

Q. And is it true and correct when I say that C. I. O. 1304 supplies the machinists to that organization?

A. Well, let me say 1304 clears them, whether they supply them or not, I'll stipulate that they clear them.

Q. They come through that organization?

A. They come through that organization.

Q. Now, what is the situation as to Bethlehem, Alameda?

A. We have no agreement with Bethlehem, Alameda. We have been certified for all crafts except the machinists.

Q. And as to that——

A. Through an N. L. R. B. election.

Q. And as to that 1304 was certified as the bargaining agent? [225]

A. They won the bargaining rights.

Q. And it was a separate unit in the organization for collective bargaining purposes?

A. In that yard it was so set up.

Q. Now, what other yards, repair yards, are there in Alameda County that I have failed to mention which you have collective bargaining agreements, and which C. I. O., in which the machinists are cleared through C. I. O. 1304?

(Testimony of Thomas A. Rotell.)

A. Well, I'm not acquainted with what yards the C. I. O. has agreements with in Alameda County.

Q. What about General Engineering in October?

Mr. Janigian: You mentioned General Engineering.

Mr. Sapiro: No, United. Did I mention General?

Mr. Janigian: Yes.

Q. (By Mr. Sapiro) What about Hurley Marine?

A. We do not furnish the machinists there.

Q. C. I. O. 1304 furnishes the machinists?

A. I presume they do.

Q. You know that, don't you, Mr. Rotell?

A. I don't know for an actual fact. I'll say that 1304 clears them.

Q. But insofar as any affiliate of yours is concerned, they don't clear any machinists?

A. That is true. You want to ask me why we don't.

Q. I'm asking the question.

A. That was off the record.

Q. What about Pacific Coast Engineering, have you a collective bargaining agreement with them?

A. We have. [226]

Q. And what about the machinists, they cleared through 1304?

A. I presume they are.

Q. At least no affiliate of yours clears them?

A. I can't truthfully answer that question, not knowing.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: Does your contract with these companies, where you said they are cleared through 1304, provide for any—cover the machinists in any of these plants?

The Witness: The agreement that those firms that have been mentioned by Mr. Sapiro, all signed the identical agreement, which provide that the Bay Cities Metal Trades Council also furnish the machinists.

Trial Examiner Myers: Where is that statement, in Council's Exhibit 2?

The Witness: That is the repair agreement here. We'll have to go into the middle of the book here and go into section No. 2.

Trial Examiner Myers: And does it cover any wages, hours, and working conditions for any machinists?

The Witness: Yes.

Mr. Royster: What page is that on, if I may ask?

The Witness: Right in the middle of the book, page 33, section No. 2, and I quote—entitled wages: "The wage scales for ship repair work on the Pacific Coast are hereby fixed at the scale set forth in Schedule A of the master contract covering new ship construction." And Schedule A contains the classification machinists. [227]

Trial Examiner Myers: Where.

The Witness: In the new construction agreement.

Trial Examiner Myers: Is there still another agreement?

(Testimony of Thomas A. Rotell.)

The Witness: This is the agreement covering new ship construction.

Mr. Janigian: For the sake of the record, I think that should go in too.

Trial Examiner Myers: What page is that, 33?

The Witness: Yes.

Trial Examiner Myers: What section did you say?

The Witness: Section No. 2, sir.

Trial Examiner Myers: Will you find it for me?

The Witness: It's on 35 on this one.

Trial Examiner Myers: Go ahead, Mr. Sapiro.

Q. (By Mr. Sapiro) Now, your so-called collective bargaining agreement with these firms that I have mentioned is identical with that Exhibit No. 2, the little short pamphlet, which you say was attached to Respondent's Exhibit 1, at the time it was executed? A. Yes.

Q. That is correct, isn't it? A. Identical.

Q. Identical? A. Yes.

Q. All those firms that I have mentioned, except the Bethlehem, where there is no signed contract?

A. There is no signed contract at Bethlehem.

Q. That is true. Now, have you the same collective [228] bargaining agreement with Cryer and Son?

A. The same collective bargaining agreement is signed with that firm. That is a wooden boat yard.

Q. And machinists employed by that firm are cleared through, or furnished by 1304?

(Testimony of Thomas A. Rotell.)

A. I don't know whether they engage any machinists or not.

Q. Well, if they do, none of your affiliates clear?

A. I can't answer that to my knowledge.

Q. What about Stone and Son?

A. That is another wooden boat yard.

Mr. Janigian: In Oakland, or Alameda?

Mr. Sapiro: Yes, I'm confining my examination to Oakland only.

Q. (By Mr. Sapiro) That is in Oakland, isn't it? A. W. F. Stone.

Q. It's in Alameda County, it's really in Alameda.

A. I don't know the location of it.

Q. And you have the same collective bargaining agreement with them as has been shown here?

A. Yes.

Q. Words and figures identical? A. Yes.

Q. And insofar as you know, no A. F. L. union clears any machinists to that organization?

A. That is correct.

Q. Now, there is another concern over there by the name of Curtola Ship Repair which you have the same collective bargaining agreement with?

A. We have no ship repair agreement with Curtola, new construction agreement.

Q. Well, do you supply—does any of your affiliates supply the machinists to that organization, so far as you know?

(Testimony of Thomas A. Rotell.)

A. As far as I know, they do not.

Q. Now, at the first meeting that you had with Mr. Lehaney, on January the 2nd, 1945, as you have already stated, there were no employees in the yard?

A. The information conveyed by the firm's representative, there were no employees.

Q. Now, at the hearing, or the meeting that you had in which Mr. Graham was present—I'll withdraw that. You had a meeting on January the 4th at which Mr. Graham was present, is that correct? A. Yes.

Q. And have you given us all of the conversation that took place at that time, that you can remember?

A. There was no transcript, so I'd have to say no.

Q. Well, do you remember anything further that was discussed?

A. No, I think I have stipulated all the discussion.

Q. You have stated all that you can remember?

A. Yes.

Q. Was this document that is in evidence, Respondent's No. 1, signed on January 2nd, discussed?

A. No, it was not discussed.

Q. Was any reference made at that conversation to the [230] effect that Lehaney had signed an agreement on the 2nd of January?

(Testimony of Thomas A. Rotell.)

A. Yes, that brought about my question to Mr. Graham, what was Mr. Lehaney's authority.

Q. Yes. And you wanted to know from Mr. Graham whether or not Lehaney had the authority to sign the document which he had signed?

A. That is right, I wanted to ascertain for my own knowledge whether that was his position and capacity or not.

Q. So didn't you say to Mr. Graham, "Lehaney signed a contract a couple of days ago, I want to know whether or not he had the authority"?

A. I wouldn't put the question that way.

Q. You didn't put it that way? A. No.

Q. What did you say about it?

A. I just come right out and asked Mr. Graham who was in authority there to handle the labor relations and negotiate for the firm.

Q. So at that time you didn't tell Mr. Graham that Lehaney had already signed?

A. I'm not working for the firm, that was Mr. Lehaney's responsibility.

Mr. Sapiro: I'll ask that that be stricken out, Mr. Examiner.

Trial Examiner Myers: Strike out the answer and read the question to the witness, please, Mr. Reporter.

(The question referred to was read by the reporter.) [231]

The Witness: I assumed that he had that knowledge.

(Testimony of Thomas A. Rotell.)

Mr. Sapiro: Move that that be stricken out.

Trial Examiner Myers: Strike it out. Will you answer the question, please?

Q. (By Mr. Sapiro) I asked him whether you told him that or not?

A. I didn't tell him that, no.

Q. Were any terms of the agreement discussed at that time?

A. Various phases of the agreement were discussed.

Q. Was one of these booklets gotten out?

A. There were several copies on the desk.

Q. And did you at that time refer to the ship repair agreement, this printed pamphlet or printed booklet?

A. We did.

Q. And referred to it?

A. No, I didn't actually take the book in my hand and refer to it. I knew the answers without looking in the book.

Q. And they asked you questions and answers about this agreement?

A. Right.

Trial Examiner Myers: You're referring to Council's Exhibit 2?

Mr. Sapiro: Yes, Mr. Examiner.

Mr. Janigian: I think it's Council's Exhibit 1 that he's referring to.

Trial Examiner Myers: 1, that is right.

Q. (By Mr. Sapiro): Now, did they read or discuss various provisions of Council's Exhibit No. 1 at that time? [232]

(Testimony of Thomas A. Rotell.)

A. No, not at that time.

Q. Now, the next time Mr. Graham was there was, I think you testified, on January the 16th, when the question of a violation came up?

A. That is correct?

Q. Now, on that day, was the contract exhibited to Mr. Graham?

A. No, there was no contracts there at that meeting at all.

Q. Well, did you open the meeting?

A. I did.

Q. And just tell us exactly what you said at that time?

A. Well, I think I stated before that we never kept any transcript of the meeting; I couldn't exactly state what I stated.

Trial Examiner Myers: Well, tell us what you remember.

The Witness: I opened the meeting by telling them the purpose of the meeting, that we were there to discuss the violation of the agreement, what we considered a violation of the agreement.

Q. (By Mr. Sapiro): Was the word "agreement" mentioned at that time? A. Yes.

Q. Was Mr. Graham there at that time?

A. Yes.

Q. Did he say anything about whether he knew that an agreement had been signed or had not been signed prior to that time?

A. That question never came up. There was no

(Testimony of Thomas A. Rotell.)

doubt in my [233] own, in Mr. Graham's mind, that there was no agreement signed.

Trial Examiner Myers: Did you say signed agreement, or just agreement?

The Witness: A signed agreement, there was no doubt in my mind——

Trial Examiner Myers: No, wait a minute; at this meeting, did you tell Mr. Graham or Mr. Lehaney or Mr. McDonald that they violated a signed agreement, or did you say that they violated the agreement?

The Witness: The agreement, I never used the phraseology signed.

Q. (By Mr. Sapiro): And there was no protest on their part that they hadn't signed any agreement? A. There was no protest whatever.

Q. Mr. Graham was there?

A. Mr. Graham was there.

Q. And what did Mr. Graham say, if you can remember, as distinguished from what McDonald said or Lehaney? A. I do not recollect.

Q. Did he take part in the discussion?

A. Oh, from time to time he interjected himself in the conversations.

Q. You have no recollection as to anything that he ever said?

A. No, his spokesmen were doing the talking.

Q. Now, on this meeting of January the 25th, which took place in the morning about 10 a.m, as

(Testimony of Thomas A. Rotell.)

I understand, the conversation was between you and Mr. Lehaney? [234] A. Yes.

Q. And no one else was present?

A. Oh, yes.

Q. I mean, on behalf of the company.

A. Mr. Lehaney, let me make sure here, Mr. Lehaney was the only representative of the firm present.

Q. Have you given all the conversation that you can remember as to what you said?

A. I have.

Q. Did you at that time tell him that if the C. I. O. machinists were retained on the job, that you would pull the job?

Trial Examiner Myers: You mean the C. I. O.

Q. (By Mr. Sapiro): I mean the C. I. O. machinists, yes.

A. I never make those statements. I have not the power to pull any job.

Q. Did you say that that would be considered a—such a violation, that the A. F. L. employees in the yard would have to withdraw from employment there? A. I gave him to understand that——

Q. Well, tell us what you said, if you can, Mr. Rotell?

A. Well, I'm going to try to put the exact words; that unless A. F. L. machinists were employed there, we would have to cease supplying him any further men, and if it necessitated from demands of other yards, we would have to withdraw our people and place them in the yards where we had the contracts.

(Testimony of Thomas A. Rotell.)

And I want to stipulate for the record, that is only by Council action, that that can be done. [235]

Trial Examiner Myers: You mean, when you say you want to stipulate, you want to say, is that what you're trying to convey?

The Witness: That is right.

Cross Examination

Q. (By Mr. Royster): Did Mr. Lehaney at any time tell you, Mr. Rotell, that he had already signed an agreement with Local 1304?

A. He never told me that he signed an agreement with 1304.

Q. Did he tell you that he had any type of agreement with 1304 with respect to machinists?

A. He stated that he never did sign an agreement with 1304.

Q. On January 2, 1945, when Mr. Lehaney came to your office and signed Respondent's Exhibit No. 1, did you and Mr. [236] Lehaney go over the provisions of Council's Exhibit No. 2, which was attached to Respondent's No. 1?

Mr. Janigian: No, Council's No. 1. Now, I'm going to object to the question on the ground it's incompetent, irrelevant, and immaterial. A person who signs an agreement is presumed to have read it.

Trial Examiner Myers: Will you read the question, please?

(The question referred to was read by the reporter.)

Trial Examiner Myers: Overruled.

(Testimony of Thomas A. Rotell.)

The Witness: Will you repeat the question, please?

Trial Examiner Myers: Will the reporter please read the question?

(The question referred to was read by the reporter.)

The Witness: We did not go over the provisions of it. He stated that he knew what the agreement was. He wanted to get cleared up, the machinists' situation.

Q. (By Mr. Royster): Wanted to get cleared up in the machinists' situation, that your answer?

A. Practically in that language; that was the bone of contention, the machinists.

Q. Let me see if I understand you: Mr. Lehaney came in on the 2nd; did you then present him with what I incorrectly described as Council's Exhibit No. 2, with Council's Exhibit No. 1, and tell him that these were the terms and conditions under which Bay City Metal Trades would supply help to the plant?

A. I told him that in order for him to have help supplied, [237] that he would have to sign the master agreement covering all employees to be furnished by the A. F. L. unions, and I strictly stressed on machinists, Local 284.

Q. Then on January 4, Mr. Lehaney returned with Mr. Graham, you had already told him under what conditions you would furnish help to him, had you not? A. I had.

Q. And Mr. Lehaney had signed the agreement,

(Testimony of Thomas A. Rotell.)

but then you went through the same procedure on January 4, did you, with Mr. Graham?

A. No, on January 4, it seemed that some row started over in Oakland over there about the signing of the agreement by 1304 interjecting itself into it, and they came up to the meeting to get——

Q. By “they” you mean Mr. Graham and Mr. Lehaney?

A. Mr. Graham and Mr. Lehaney, a further understanding.

Q. Now, you also testified that on January 4th you were told by Mr. Lehaney or Mr. Graham that they were in need of twenty machinists, ten machinists? A. Twenty.

Q. And that they must have them by the following Wednesday. Did any organization affiliated with Bay City Metal Trades supply those twenty machinists? A. They attempted to.

Q. How do you know they attempted to?

A. By the men that were dispatched to the firm, by the union’s records.

Q. Were any of them employed, placed on the pay roll of Graham at that time? [238].

A. Not to my knowledge.

Q. I’m not quite clear on your testimony with respect to this situation. You testified, as I understand it, that you weren’t concerned about dry dock facilities at Graham Ship Repair Yard, that much of the machinist work was to be done uptown; was that your testimony?

A. The type of work that the firm’s representa-

(Testimony of Thomas A. Rotell.)

tive told me that they would have involved work that did not necessitate dry docking it could be performed in uptown shops, not having the facilities to do their own machine work.

Q. Well, do I understand from that, that at first you didn't contemplate that there would be need for machinists at Graham's?

A. No, I knew there would be need for machinists. Any vessel going into a yard for repairs has a certain amount of machinists work on it, irrespective of whether it's below the water line or above or inside the hull.

Q. I think I understand you now. Then you did understand that after it left Graham's yard it would not need dry docking?

A. It might need dry docking, but I specifically requested or asked the Graham's representatives, who had the allocation of that work, they said they do not subcontract themselves, that the Navy subcontracts that work and allocates it to a specific yard for dry docking, and what specific work must be done for the dry docking operations, which we had no objection to going into, Moore, General, United, wherever they had their dry docks being done by 1304 machinists. [239]

Q. When did Mr. Graham tell you that he had a prospective need for 150 machinists?

A. That was borne out that morning.

Q. This is on January 4?

A. January 4.

Q. Did he tell you within what period of time

(Testimony of Thomas A. Rotell.)

he expected employment so to increase as to necessitate that number of machinists?

A. As soon as their ceiling was lifted to reach 850, that it would necessitate that amount of machinists in order to successfully operate.

Q. Did he tell you what progress he was making in having that ceiling lifted?

A. Yes, he told me he was having a tough time.

Q. Beg pardon.

A. He told me that he was having a tough time to get it raised.

Q. Well, did you have any understanding with Mr. Graham as to the probability of when they would need 150 machinists at that yard?

A. I stated if and when the ceiling would have been raised to 850.

Q. Do you have any definite date in mind?

A. No, I have no definite date; it could have happened overnight.

Mr. Royster: I think that is all.

Trial Examiner Myers: Any questions, Mr. Janigian?

Mr. Janigian: Just a few more. [240]

Redirect Examination

Q. (By Mr. Janigian): At this meeting of January 25th, Mr. Rotell, was there any mention made by Mr. Lehaney of a conversation he had with Mr. Smith? A. Yes.

Q. What did Mr. Lehaney say as to any conversation he had with Mr. Smith?

(Testimony of Thomas A. Rotell.)

Mr. Sapiro: I'll object to that as pure hearsay, not in the presence of Mr. Smith, and not binding on Mr. Smith, or the East Bay.

Trial Examiner Myers: Overruled. I'll take the answer; if he doesn't connect it up, I'll entertain a motion to strike.

The Witness: He stated that Mr. Smith held several meetings with him and tried to force the firm to signing the agreement with 1304 to supply the machinists, and his answer at all times was that under no consideration would he sign an agreement with him. They already had an agreement signed with the Bay City Metal Trades Council for the machinists.

Trial Examiner Myers: When was the first time he told you that?

The Witness: Right from the start, sir.

Trial Examiner Myers: January 2?

The Witness: No, not January 2.

Trial Examiner Myers: January 4?

The Witness: January 4 was the first mention of him talking with Mr. Smith. [241]

Trial Examiner Myers: And did he mention that at the January 9th meeting?

The Witness: He mentioned that practically at every meeting that we held.

Trial Examiner Myers: Well, do you remember of him saying it at a January 9th meeting?

The Witness: On January 9th his discussions were held in the office with me, there was no meeting on January the 9th.

(Testimony of Thomas A. Rotell.)

Trial Examiner Myers: Well, when I say meeting, I mean met with you.

The Witness: Oh, yes.

Trial Examiner Myers: I'm not characterizing, when I say meeting, I mean met with you. When he met with you on January 9th, did he make that statement?

The Witness: He did, yes, sir.

Q. (By Mr. Janigian): And what about the January 16th meeting, or conference?

A. Mr. Lehaney and myself were in constant touch since the signing of the agreement; every time we discussed the situation, he told me that Mr. Smith had attempted to meet with him and did meet with him and tried to get him to sign the agreement.

Trial Examiner Myers: And all this time he was telling you that he didn't have any C. I. O. machinists in the plant at all?

The Witness: No, there were C. I. O. machinists, I ascertained from him that there were three C. I. O. machinists there on January the 4th, and his instructions were for [242] their removal from the yard, that they were illegally hired.

Q. (By Trial Examiner Myers): Did he tell you that they were hiring other C. I. O. machinists right along?

A. No, the information was conveyed to me, that at no time did he have over three C. I. O. machinists in there.

Q. You mean, he told you?

(Testimony of Thomas A. Roteli.)

A. Yes, sir. And I had the names of those machinists who were purportedly working there at that time.

Q. And he said he only had three machinists in the plant? A. Three.

Q. And he told you that on January 4th he needed twenty right away, that is by the following Wednesday?

A. As late as January the 13th—no, 12th. Mr. Lehaney told me that he had three CIO machinists in there, and that they were going to be laid off at noon that Saturday, and for me to call the A. F. L. Union, to have on hand Monday morning an equal amount of machinists to start operations.

Q. Well, he didn't hire any on that following Monday, did he, any A. F. L. machinists?

A. I couldn't say whether he did or not, sir.

Q. Well, you know there weren't any A. F. L. machinists up there up to the 25th of January, don't you know that?

A. No, I do not know, sir.

Q. Well, I mean, all your dealings with the machinists, the I. A. M. and Graham and Lehaney, and you're complaining right along that they wouldn't hire any A. F. L. machinists, didn't that bring home to you the fact that there weren't any up there? [243]

A. Well, I can answer that, the information conveyed by Mr. Lehaney was that two of those three were A.F.L. machinists carrying two cards, so the answer was yes and no.

(Testimony of Thomas A. Rotell.)

Q. What two?

A. Well now, I just don't know which two.

Q. Was it Ashcraft, was he the one that carried them? A. It was two of those three.

Q. Hostetler or Potter?

A. Mr. Lehaney stated that when they informed the men that they were to be laid off, they said, "Well, we're A.F.L. men," and they broke out their book and showed it to the.

Q. How about the other twenty or fourteen that they had over there?

A. Well, they were hired at the gate, I guess. We had no knowledge of them being employed.

Q. Well, you knew that a ship repair plant can't get along without machinists and they need them right away? A. That is right.

Q. And they were begging you for them, and you say they were sending people out there, and they wouldn't hire them?

A. They also stated at that time, sir, that they didn't have much work, and there was no need of hiring any more.

Mr. Janigian: I'd make the observation on that point, Mr. Trial Examiner, that that is one of the riddles in this case, information I have from the employer shows that on [244] January 3rd they had three machinists, and on January 15th they had three machinists. How many they had in between I don't know, but that three wasn't increased until after the 15th I think that I want to have clarified.

Trial Examiner Myers: All I can go by is this

(Testimony of Thomas A. Rotell.)

Exhibit 6 of the Board, that what I had before me, when I was questioning the witness.

Mr. Janigian: That is right, they still had three.

Trial Examiner Myers: Well, we'll get that stipulation in the record. Go ahead.

Q. (By Mr. Janigian): Now, Mr. Rotell, now getting back to this meeting of January 25th; you said that mention was made as to—by Lehaney about the conversation with Smith and Smith's demand for a contract; did or did not Mr. Lehaney state that Mr. Smith set a dead line for the signing of a contract with the C.I.O.?

Mr. Sapiro: Objected to as leading and suggestive.

Trial Examiner Myers: Overruled.

The Witness: That was mentioned, yes, that Mr. Lehaney conveyed the information to the meeting that Mr. Smith stated that a dead line was set for Monday morning.

Trial Examiner Myers: What Monday morning.

The Witness: The following Monday morning.

Q. (By Mr. Janigian): Following the 25th?

A. Following the 25th, that there would be a cessation of work and a picket line established if he didn't comply.

Q. Was a picket line established?

A. Never.

Mr. Sapiro: Wait a minute. I move that that be [245] stricken out as pure hearsay, and not binding on the petitioner in this case.

Trial Examiner Myers: Overruled.

(Testimony of Thomas A. Rotell.)

Mr. Sapiro: May that be taken subject to the same motion to strike, Mr. Examiner?

Trial Examiner Myers: Very well.

Mr. Janigian: It's the conversation, and if you want——

Trial Examiner Myers: I have ruled in your favor, Mr. Janigian.

Mr. Janigian: Thank you, Mr. Examiner.

Q. (By Mr. Janigian): Now, you mentioned that the various firms that you referred to as having contracts with the A.F.L. had signed Council's Exhibit No. 1, in answer to a question by Mr. Sapiro. Now, I show you Council's Exhibit for identification No. 4——

(Thereupon the document above referred to was marked Council's Exhibit No. 4 for identification.)

Q. (Continuing): And ask you to identify this. I have in my hand the master agreement covering new ship construction between the Pacific Coast Ship Builders and the Metal Trades Department, American Federation of Labor, Pacific Coast District, Metal Trades Council, and the local Metal Trades Councils, and affiliated international unions dated April the 23rd, 1941, which I identify as the original master agreement signed, covering the Pacific Coast.

Trial Examiner Myers: That is not the agreement that is referred to in Council's Exhibit No. 2, is it, this blue book?

The Witness: This is the ship repair agree-

(Testimony of Thomas A. Rotell.)

ment, [246] this is the new construction agreement, the original new construction agreement? [247]

Q. (By Mr. Janigian): Now, Mr. Rotell, the master contract covering new ship construction referred to in the ship repair agreement—withdraw that. Is Council's Exhibit No. 4 the master contract covering new ship construction referred to in the ship repair agreement? A. It is.

Q. Now, having particular reference to the agreement which commences on page 33 and 34 of Council's Exhibit No. 2, and which purports to have the date April 1st, 1941, I'll ask you whether or not that agreement was not actually signed, that is the master agreement, on the 25th day of April, 1941?

A. That is correct, and it was dated back to be effective April the 1st; that was the effective date, April the 1st.

Q. And Council's Exhibit No. 4, I'll ask you whether or not Council's Exhibit for identification No. 4 was the master agreement covering new ship construction which was executed following a coast-wide conference on the Pacific Coast?

A. It is.

Q. Which commenced in February 3rd and finished it's deliberation on April 23rd, 1941?

A. Yes, in Seattle, Washington, that is.

Q. And following that conference was there or was there not held a repair conference? [248]

A. There was.

Q. At Seattle? A. Yes.

(Testimony of Thomas A. Rotell.)

Q. And an agreement was reached with respect to the repair of ships? A. That is it.

Q. And that was signed on April 25th?

A. Yes.

Q. Now, will you show me, so that Mr. Myers can see it, ask you whether or not this agreement or form which starts on the top of page 34—

A. That is what is termed as the master ship repair agreement for the Pacific Coast.

Mr. Janigian: Now, I'd like to offer, Mr. Trial Examiner, Council's Exhibit No. 4 in evidence.

Trial Examiner Myers: Any objection, gentlemen?

Mr. Sapiro: I don't see the materiality of it. I object to it as immaterial.

Mr. Janigian: Well, Mr. Trial Examiner, Council's Exhibits No. 1 and 2 are not complete, at least so far as the record is concerned, until we have Council's Exhibit No. 4, because reference is made to No. 4, to Council's Exhibit No. 4. And I might state, that even the agreements which were introduced on behalf of the C.I.O. contained the same reference. In fact they are the identical agreements.

Trial Examiner Myers: Well, the C.I.O. didn't offer any papers in evidence, the Board did.

Mr. Janigian: Oh, the Board, I mean the Board's—the agreements offered in evidence by the Board referred to [249] in fact contained the same language as I pointed out to you on page 34.

Trial Examiner Myers: I'll overrule the objec-

(Testimony of Thomas A. Rotell.)

tion, and receive the booklet in evidence, and ask the reporter to please mark it as Council's Exhibit No. 4.

(Thereupon the document heretofore marked Council's Exhibit 4 for identification was received in evidence.)

COUNCIL'S EXHIBIT' No. 4

Council's Exhibit No. 4 is the Master Agreement Covering New Ship Construction between the Pacific Coast Shipbuilders and the Metal Trades Department, A. F. of L., the Pacific Coast District Metal Trades Council, the Local Metal Trades Council, and affiliated International Unions, dated April 23, 1941. The agreement provides for a closed-shop for job classifications included thereunder and contains a "Schedule A" which sets forth the hourly rates for approximately 54 occupational classifications in new ship construction, including Machinists. The agreement is signed by the employers to be covered and by the various international craft unions, including the International Association of Machinists.

Q. (By Mr. Janigian): Mr. Rotell, at this meeting of January 25th, did or didn't—I'll withdraw that. At this meeting of January 25th, 1945, what did Mr. Lehaney say on the subject of A.F.L.

(Testimony of Thomas A. Rotell.)

machinists reporting to the Graham Ship Repair Yard for work and being turned away?

A. Well, he made quite a holler about it, and he laid the responsibility on supervision in the yard.

Q. I mean, what did he say, just tell us that; you say responsibility. We want to know what he said, to whom did he lay the responsibility?

A. He laid the responsibility to the hull superintendent, Mr. Close, and also the machinists superintendent, Mr. Rogers.

Q. What did he say with respect to Mr. Close and Mr. Rogers?

A. That they would not hire them.

Q. He said they would not hire A.F.L. machinists?

A. Would not hire A.F.L. machinists.

Mr. Janigian: I think that is all.

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Royster: No more.

Q. (By Trial Examiner Myers): Now, do you consider your [250] contract with General Engineering & Dry Dock Company, Columbia Machine Works, Pacific Dry Dock and Repair Company, and United Engineering Company, and Moore Dry Dock Company, and Matson Navigation Company, as having been abrogated? A. No, sir.

Q. Do you consider your contracts with any other companies where you don't supply machinists as being abrogated?

A. We don't consider it abrogated. The agree-

(Testimony of Thomas A. Rotell.)

ment is in full force and effect. There has been hearings held on the question of the machinists, which has quite a lengthy history behind it, and on account of the decisions that were handed down and what transpired at the time, we were in no other position but to abide by the decision handed down.

Q. Handed down by whom?

A. By the War Labor Board.

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Sapiro: Just one other question.

Recross Examination

Q. (By Mr. Sapiro): There was one decision handed down by the National Labor Relations Board in which this identical question was raised, and it was against the contention of the A.F.L., particularly the Bay City Metal Trades Council, isn't that correct?

Mr. Janigian: You have in mind the Bethlehem Alameda case as to the unit being set up.

Mr. Sapiro: Yes, it's a matter of record.

Mr. Janigian: The Board knows that.

Trial Examiner Myers: We'll go into the law later. [251] Any other questions of this witness?

Mr. Janigian: No.

Trial Examiner Myers: You're excused sir.

(Witness excused.)

CHARLES B. TRUAX,

called as a witness by and on behalf of the Bay Cities Metal Trades Council, A. F. of L., being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Charles B. Truax.

Trial Examiner Myers: And where do you live, Mr. Truax?

The Witness: 2242 44th Avenue, San Francisco.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Janigian.

Q. (By Mr. Janigian): Mr. Truax, do you hold a position with the International Association of Machinists? A. I do.

Q. What is that position? [252]

A. Grand Lodge representative.

Q. What are your duties as Grand Lodge representative, Mr. Truax?

A. Service the locals in the bay area.

Q. And you have a particular assignment in the bay area? A. I do.

Q. What is that assignment?

A. Administration of Lodge 284 and District 115.

Q. And I'll ask you whether or not you know Mr. Graham and Mr. Lehaney? A. I do.

Q. When did you first meet Mr. Graham and Mr. Lehaney? A. January the 4th.

Q. You were here in the hearing room when

(Testimony of Charles B. Truax.)

some testimony was given as to a meeting held on January the 4th, 1945? A. That is right.

Q. And Mr. Rotell testified to such a meeting?

A. Yes.

Q. Were you present at that meeting?

A. I was.

Q. Will you tell us briefly what was said at that meeting, particularly by Mr. Al Wynn, A. T. Wynn?

A. There were two meetings held that morning, I think the first one was called for 8 o'clock, which was confined to representatives of the American Federation of Labor affiliates. At that meeting the machinists were asked if they could supply the men.

Q. Who asked that, who made that statement?

A. Al Wynn.

Q. Al Wynn asked the machinists if they could supply the men? A. That is right.

Q. What did Al Wynn say with respect to this Graham Ship Repair Yard?

A. Said they had a signed agreement there.

Q. Yes, asked you if you could supply the men?

A. That is right.

Q. And then what——

A. What our position was on it, and I told him we could supply the men and would supply the men.

Q. That was asked specifically of the machinists representative, is that right?

A. That is right. There was three representatives of the machinists there, and I spoke for the three.

(Testimony of Charles B. Truax.)

Trial Examiner Myers: Did Mr. Wynn say how many men you were supposed to supply?

The Witness: No, sir.

Trial Examiner Myers: Did you ask him?

A. I asked him approximately how many men it would take and he said that as the organization or the company grew that it would probably take up to 150 or 200 men.

Q. (By Mr. Janigian): Now, that morning was there another meeting with Mr. Graham and Mr. Lehaney?

A. There was, following that meeting.

Q. Following that meeting the same morning?

A. I made a telephone call and went downstairs, they said the meeting would be in a room downstairs. I went downstairs [154] to this meeting, and everybody was present there waiting for me to appear, and Mr. Graham and Mr. Lehaney were—I was introduced to them, those two people, that was my first meeting of the two, to my knowledge.

Q. Now, what was said at that time about an agreement?

A. Well, at that time again the machinists were asked, and they were asked by Mr. Graham and Mr. Lehaney if they could supply the men, and if they would supply the men.

Q. What men did they have in mind?

A. The machinists.

Q. And what did you say when they asked you whether you could supply the men?

(Testimony of Charles B. Truax.)

A. I said we could and we would.

Q. Was there any mention made of the fact that an agreement had previously been signed?

A. There was.

Q. Who made that mention of that fact?

A. Mr. Rotell brought that up in this manner: That he asked Mr. Graham if Mr. Lehaney had the authority to handle the labor relations and had the authority to sign the agreement which he had signed, and Mr. Graham said that he had, did.

Q. Now, was there any mention made of the number of machinists who were to be supplied?

A. There was.

Q. How many?

A. I asked them to give us reasonable time in which to supply these men, they expected top craftsmen, and he said, "Well," he said, "we'll need twenty-five or thirty men by [255] next week, and at least——"

By Mr. Royster: May I interject here. I'm not quite clear as to whom the witness is testifying about at this moment.

Q. (By Mr. Janigian): Who made that statement, Graham or Lehaney?

A. Both Graham and Lehaney.

Q. Twenty-five you say?

A. Twenty-five or thirty.

Q. By next week?

A. By next week, that it would require at least twenty. I said, "Twenty-five or thirty men is quite a few men to pick up right like that."

(Testimony of Charles B. Truax.)

Q. And following that meeting did you then take steps to have men dispatched to the Graham Ship Repair Yard? A. I did, I had prior to that.

Q. You had prior to that meeting?

A. That is right.

Q. Had you dispatched men to the Graham Ship Repair Yard?

A. I had sent men down there prior to that.

Q. And then were those men put to work?

A. They were not.

Trial Examiner Myers: When did you first send some men?

The Witness: Some time in the latter part of December.

Q. (By Mr. Janigian): Now, in January had you sent any one to the yard?

A. I did, I sent two men. I think it was on the morning of the 5th, I think, by golly, come to think of it, this one man was sent down there on the afternoon of the 4th. [256]

Q. The same day that you had the meeting?

A. I'm quite sure of that.

Q. Now then, in January the first man who was sent from 284 to the yard for Graham Ship Repair Yard for work was on the afternoon of January 4th. is that right? A. Following this——

Q. Meeting, yes.

A. This meeting, that is right.

Trial Examiner Myers: Who asked you to send men down in December?

The Witness: Nobody.

(Testimony of Charles B. Truax.)

Trial Examiner Myers: How did you happen to send them down?

The Witness: I heard about the yard in December, the latter part of December, a couple of guys come up there, telling me about hearing about this new yard going to start up, and asked about getting a job down there. I said, "Well, go down and see if you can get a job, until we see what is cooking," and they come back and reported that there was no work down there, and that there was nobody working.

Q. (By Mr. Janigian): What happened to this man who was sent on the 4th of January to the Graham Yard for work?

A. He came back, I didn't talk to the man, the dispatcher told me, he says, "Why," he says, "no use sending men down there. I've sent this fellow down there." And the next morning is when I really talked to the dispatcher, and he said, "I've sent two more down, and they have returned," [257] he says, "You tell me that they want twenty men down there, and they don't, they're sending them back." The following morning there was one or two more sent down, and they bounced back, according to the dispatcher. I called on the telephone, I called Graham's Yard down there to speak to Mr. Graham or Mr. Lehaney. They were, I was informed, in Los Angeles. I asked the girl who was next in charge and in regard to hiring men, and she referred me to Mr. Bates. I told Mr. Bates that the company had made a request of us for

(Testimony of Charles B. Truax.)

twenty men and I had sent men down there and they were bouncing back. Now what was the matter. He says, "Well, I don't know anything about it, I'll refer you to Mr. Close." And Mr. Close came to the telephone, identified himself. I told him the same story, that the company had requested the men, the men had been dispatched, and were coming back. He said there was no work there in the yard for machinists, they didn't need any.

Q. And about when was this that you had this conversation with Mr. Close.

A. That was, I'm pretty sure, on the 5th of January.

Q. Following the 5th of January were men still dispatched to Graham Ship Repair Yard?

A. That is right, there was several different occasions there were men sent down there.

Q. And were any of the men dispatched from Local 284 put to work at the Graham Ship Repair?

A. There were none put to work to my knowledge until the 25th. [258]

Trial Examiner Myers: January 25th?

The Witness: That is right.

Q. (By Mr. Janigian): After this conversation you had with Close on the 5th day of January did you have any further conversations with Mr. Close?

A. Yes, I have had a lot of conversations, several of them maybe in a group.

Q. Did you ask him why he wouldn't put your men to work?

A. No, I went to—got in touch with Rotell to

(Testimony of Charles B. Truax.)

follow that out. I immediately got in touch with Rotell and said, "What is the score here, somebody is giving somebody the run around."

Q. And——

A. (Interposing): And Rotell told me he would call them up out there. I contacted Rotell inasmuch as it was an agreement by this Bay City Metal Trades, and had been authorized by our organizations to do as such, that that is where it should be handled from.

Q. Now tell me if you had any further conversations with Mr. Lehaney on this business of machinists being sent down and being turned back?

A. Yes, I did.

Q. When did you have that conversation?

A. I think that was about the 23rd or 24th, something like that.

Q. Of January? A. Of January.

Q. In the meanwhile had you had any further conversations [259] with Close on this subject of your members being sent back after being referred to the job?

A. I don't remember whether I did or not. You mean between the 5th and the 25th?

Q. That is right.

A. Between that period?

Q. That is right.

A. I couldn't truthfully say. It seems as though there was a conversation, but I kind of place it in my mind as after the 23rd or 24th.

Mr. Janigian: That is all.

(Testimony of Charles B. Truax.)

Trial Examiner Myers: Any questions, Mr. Stimmel?

Cross Examination

Q. Well, I thought perhaps that the other union men affiliated with the A.F.L., did they report to the hiring hall that machinists of the C.I.O. union were employed, and they would report that to you, and you had knowledge of that fact?

A. That I had knowledge of the fact that there were C.I.O. employed in there?

Q. Yes, as machinists, during the same period of time that you were dispatching machinists down from your hiring hall [260] and they were refused employment?

A. Well Mr. Graham, trying to straighten out what is in my mind or your mind, Mr. Graham stated down there and Mr. Lehaney did, that there was two or three machinists in the yard there.

Trial Examiner Myers: And when did they make that statement?

The Witness: January the 4th.

Trial Examiner Myers: Did they say with what organization these two were associated?

The Witness: I don't know. They asked me what disposition would be made of it, and I said they would follow the same procedure as any other man, they would be sent to the hall and re-dispatched.

Trial Examiner Myers: Did they tell you that they were C.I.O. men?

The Witness: No, I don't know whether the

(Testimony of Charles B. Truax.)

statement was made, or I was given the impression, that two of them were 68 members, Lodge 68 I.A.M. affiliated with the American Federation of Labor.

Q. (By Mr. Royster): Does Local 284 International Association of Machinists supply machinists to any ship repair yard in Alameda County?

A. To any ship yard?

Q. Any ship repair yard. A. Yes.

Q. In Alameda County? A. Yes.

Q. Which one?

A. Graham, I know of.

Q. Do you know of any others?

A. Not right off hand.

Q. Is your organization the International Association of Machinists signatory to Council's Exhibit No. 1, this ship repair agreement?

A. As far as I know they are. I never seen them sign it.

Q. What was your answer?

A. I said as far as I know they are, I never seen them sign it.

Q. Well, as far as you know they are not then, is that a fair inference from your answer?

A. No. I say as far as I know they are, but I never [262] witnessed the signature.

Q. Can you show me any place in the book where International Association of Machinists appears as a signer to any of those agreements or supplemental agreements?

A. I don't know whether it's in this one or not.

(Testimony of Charles B. Truax.)

I know I have one that is signed by George C. Castleman, International Vice President.

Q. My question is as to this one, is it in there?

Mr. Janigian: Castleman is in the new ship construction agreement.

Trial Examiner Myers: What one have you got, have you got it with you?

The Witness: No, I'm sorry I have not.

Trial Examiner Myers: You're not referring to the master agreement covering new ship construction, are you?

The Witness: Yes, there is one like that, and then there is one like this one too, I'm pretty sure.

Trial Examiner Myers: Well, the document speaks for itself.

Mr. Royster: All right, the witness doesn't know.

Mr. Janigian: However, I might make the statement, as Council's Exhibit No. 1 and No. 2 show, this Pacific Coast master ship——

Mr. Sapiro: I object to your arguing.

Mr. Janigian: Wait a minute, I'm making a statement, I have a right to make a statement.

Trial Examiner Myers: Let him make his statement.

Mr. Janigian: The Pacific Coast master ship agreement [263] which was dated April 1st, but which was actually signed on April 25th, is inserted in this document, but the signatures are deleted, the signatures, original signatures in office files. I had a photostatic copy of that agreement that was signed, and that contains the signature of the In-

(Testimony of Charles B. Truax.)

ternational Association of Machinists and Mr. Castleman. I'll furnish that photostatic copy in evidence.

Mr. Royster: Well, the answer to my question as to Council's Exhibit No. 1 is that the witness doesn't know, that they're not a signatory to it, is that correct, but that he has never seen a signature affixed. The record will show.

Trial Examiner Myers: Well, proceed with the examination.

Q. (Mr. Royster): What is the membership of 284, Mr. Truax, Local 284?

A. I couldn't tell you exactly.

Q. Could you tell me approximately?

A. Sixteen or seventeen hundred.

Q. Do you know what—does Local 284 admit to membership any but journeymen machinists?

A. Sure.

Q. Do you know what percentage of that sixteen or seventeen hundred are journeymen machinists.

A. No, I couldn't tell you exactly, I can give you my estimate.

Q. What would your estimate be?

A. My estimate would be that there would be around a thousand.

Q. That were journeymen? [264] A. Yes.

Q. Where are the——

A. Better than that even.

Q. Is there one employer who employs the bulk of the membership of Local 284?

(Testimony of Charles B. Truax.)

A. I don't know if 284 is on trial or not.

Q. It's not on trial at all. I'm just looking for information.

Mr. Janigian: Wait a minute, I was going to interpose an objection. I don't see the materiality to the question. If you want to inquire into the numerical strength of the A.F.L. machinists locals——

Trial Examiner Myers: I'll sustain the objection. [265]

Mr. Royster: I have a stipulation to propose, Mr. Examiner, as follows: "It is hereby stipulated by and among the parties to this proceeding, that the following named were employed by Graham Ship Repair Company on the dates given, and that they continued in that employment until 7 p.m. on January 25, 1945: Frank Shaffer, hired January 20, 1945. Gus B. Bernes, hired January 16, 1945. Thomas F. Wright, hired January 22, 1945. Benjamin F. Clark, hired January 24, 1945. Jim H. Clark, hired January 24, 1945. William (Bill) Searing, hired 1/23/45. C. W. Lewis, hired 1/25/45. Albert Sequeira, hired 1/24/45. It is further stipulated that the above named were during the month of January, 1945, members in good standing in East Bay Union of Machinists, Local 1304, C.I.O., and that all production and maintenance employees employed by Graham Ship Repair Company at its Oakland plant in classifications other than machinists, machinist maintenance mechanics, machinist helpers, machinist apprentices, and machinist

(Testimony of Charles B. Truax.)

trainees from January 2 to January 25, 1945, were cleared through and were members of the respective A. F. of L. unions affiliated with the Bay Cities Metal Trades Council."

Trial Examiner Myers: Do you so stipulate, Mr. Royster?

Mr. Royster: I so stipulate.

Trial Examiner Myers: Mr. Janigian?

Mr. Janigian: I so stipulate.

Trial Examiner Myers: Mr. Stimmel?

Mr. Stimmel: I do.

Trial Examiner Myers: And Mr. Sapiro? [267]

Mr. Sapiro: I do. [268]

W. C. GRAHAM,

a witness recalled by and on behalf of the Council, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Janigian:

Q. I show you, Mr. Graham, Council Exhibit for Identification No. 5, and ask you to identify it.

A. This is the record of the Graham Ship Repair Company of the number of employees, production employees on the payroll between the dates of January 2nd and January 25th, inclusive, showing the total number of production employees and the total number of machinists employed on the various days.

(Testimony of W. C. Graham.)

Mr. Stimmel: I believe that record is from the 1st, [273] including the 1st.

The Witness: Yes, from the 1st to the 25th, inclusive.

Q. (By Mr. Janigian): By production employees you mean all employees, exclusive of clerical? A. And officers.

Q. Executives and supervisory employees, with the right to hire and fire? A. That is correct.

Q. You have one column of figures at the top of which you have "Total Employees." Do those figures indicate the total employees, less the machinists; or does that also include machinists?

A. That includes machinists.

Q. Then the next column, you have "Total Machinists," and that is spelled "Mach."

That would be merely the machinists, no one else? A. That is correct, and helpers.

Q. Machinists and helpers, and so on, all those in the machinist category?

A. That is correct.

Mr. Janigian: I would like to offer this in evidence.

Trial Examiner Myers: Any objection, gentlemen?

Mr. Royster: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter [274] to mark it as Council Exhibit No. 5.

(The document heretofore marked Council

(Testimony of W. C. Graham.)

Exhibit No. 5 for identification, was received in evidence.)

COUNCIL'S EXHIBIT No. 5

GRAHAM SHIP REPAIR CO.

3/19/45

January	Total Emp.	Total Mach.
1		
2	8	0
3	19	3
4	36	3
5	42	3
6	41	3
7	10	1
8	67	3
9	80	3
10	87	3
11	97	3
12	108	3
13	106	3
14	97	2
15	137	3
16	161	4
17	165	4
18	171	4
19	174	4
20	186	5
21	180	4
22	227	6
23	200	7
24	212	10
25	225	16
26		
27		
28		
29		
30		
31		

(Testimony of W. C. Graham.)

Trial Examiner Myers: Are there any other questions?

Mr. Janigian: No other questions of Mr. Graham?

Trial Examiner Myers: Do you gentlemen want to ask Mr. Graham any questions?

Mr. Royster: I have a few questions I would like to ask him about that payroll.

Trial Examiner Myers: Very well, go ahead.

Cross Examination

By Mr. Royster:

Q. Mr. Graham, under the heading of "Total Machinists," on January 7th appears the figure "1." What significance has that figure "1" with respect to January 7th?

A. That was probably a Sunday.

Q. Does the "1" mean that on that day there was just one machinist working?

A. That is correct.

Q. It does not mean on that date there was only one machinist on your payroll?

A. That is correct.

Trial Examiner Myers: You had three on that date?

The Witness: That is correct, yes.

Trial Examiner Myers: The 7th was a Sunday.

The Witness: Yes.

Q. (By Mr. Royster): Well, again, the 14th is a Sunday, and the column of "Total Machinists" shows 2. On the previous day and on the succeeding day it shows 3.

(Testimony of W. C. Graham.)

A. That is the same situation. The 14th being a Sunday, we had two machinists, a total of 97 production employees.

Q. But it does not mean that one machinist had been dropped from the payroll?

A. That is correct. [276]

ALFRED T. ROGERS,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Alfred T. Rogers.

Trial Examiner Myers: Will you spell your last name for the Reporter, Mr. Rogers?

The Witness: R-o-g-e-r-s.

Trial Examiner Myers: Where do you live, Mr. Rogers?

The Witness: Berkeley, 2419 Durant Avenue.

Trial Examiner Myers: You may proceed, Mr. Stimmel.

Q. (By Mr. Stimmel): Mr. Rogers, I show you this paper. Are you familiar with that record?

A. Well, I went to work there the 22nd of January.

Q. You went to work there the 22nd?

A. That is right.

(Testimony of Alfred T. Rogers.)

Q. You do not know then what happened before that? A. No.

Q. On the 22nd, on the date specified on this document, thereafter did you requisition the machinists that were hired?

A. Well, not directly. That was done by the machinists' leaderman.

Trial Examiner Myers: The machinists who?

The Witness: Leaderman.

Q. (By Mr. Stimmel): Who is the machinists' leaderman?

A. I never did know him long enough to know his name.

Mr. Smith, do you know?

Trial Examiner Myers: If you do not know, just say you don't know.

Q. (By Mr. Stimmel): Mr. Rogers, do you know to your knowledge whether any of these machinists employed during the period since you were superintendent of machinery were A. F. of L. machinists, whether they were all C. I. O. machinists?

A. I don't know.

Q. Mr. Rogers, you attended the meeting of the Metal Trades Council on January 16th, did you? A. Yes, I did.

Q. Could you state to the Court, please, the statement made at that time as to the purpose of the meeting being called?

A. Well, yes, we went there to ask the Metal Trades to release us from the obligation that we

(Testimony of Alfred T. Rogers.)

evidently had. We wanted to ask their permission to put C.I.O. machinists in there.

Mr. Janigian: That is January 16th?

The Witness: I believe that is the date.

Q. (By Mr. Stimmel): Who made that statement, Mr. Rogers?

A. Mr. Graham, and Mr. Graham and I before we went there, [278] Mr. Graham made that statement that we were going over to ask the permission of the Metal Trades to release us from this agreement. Mr. Graham made that statement to me.

Q. After you arrived at the meeting, was such an announcement made by Mr. Rotell?

A. Not to my knowledge, I don't remember that.

Q. Did any official connected with the Metal Trades Council make a statement at that meeting in your presence to the effect that the meeting was called for the purpose you mentioned heretofore?

A. No.

Mr. Stimmel: That is all.

Trial Examiner Myers: Any questions, Mr. Janigian?

Mr. Janigian: No.

Trial Examiner Myers: Mr. Royster?

Mr. Royster: No questions.

Trial Examiner Myers: What was said at that meeting of January 16th and by whom?

The Witness: By whom?

Trial Examiner Myers: Yes.

The Witness: Well, it was agreed that the A.

(Testimony of Alfred T. Rogers.)

F. of L. were going to use their prestige to get work, get ships for Graham Ship Repair.

Trial Examiner Myers: Is that all you remember that was said? [279]

The Witness: Oh, no.

Trial Examiner Myers: Tell us everything you remember that was said and who said it.

The Witness: Well, Mr. Graham made the statement that if he wasn't released from this agreement, it was putting him in a position where he could not supply, and he asked the meeting to, on the strength of that, to release him, and it was promised by the A. F. of L. that they were to do everything in their power to give him men and work. They were even going so far as to try to get work from Washington.

Trial Examiner Myers: What agreement did Mr. Graham want to be released from?

The Witness: The supposed agreement that the A. F. of L. machinists were working in the yard. That was the agreement he wanted to be released from.

Trial Examiner Myers: When did you start your connection with the company?

The Witness: The 22nd of January.

Trial Examiner Myers: What was your job?

The Witness: Marine Superintendent.

Trial Examiner Myers: Are you still Marine Superintendent?

The Witness: That is right.

(Testimony of Alfred T. Rogers.)

Trial Examiner Myers: How did you happen to be at this meeting on January 16th? [280]

The Witness: I was invited by Mr. Graham.

Trial Examiner Myers: That was prior to your employment?

The Witness: Oh, the 16th—wait a minute—no, I wasn't to a meeting on January 16th.

Trial Examiner Myers: When was the meeting?

The Witness: I wouldn't know what date it was. It was after the 22nd of January.

Trial Examiner Myers: Was it after the 25th of January?

The Witness: Maybe after that.

Trial Examiner Myers: What is your best recollection?

The Witness: I wouldn't know.

Trial Examiner Myers: Well, you started there on what day of the week with the company?

The Witness: On a Monday.

Trial Examiner Myers: Do you remember whether that meeting was held during the first week of your employment?

The Witness: No, I don't.

Trial Examiner Myers: Do you remember there was some trouble at the plant there about the C.I.O. machinists and the A. F. of L. machinists **being** there on the same day?

The Witness: Yes, there was that. I was there then.

Trial Examiner Myers: Do you remember the

(Testimony of Alfred T. Rogers.)

A. F. of L. machinists started coming into the plant on the 25th of January? [281]

The Witness: That is right.

Trial Examiner Myers: Was this meeting after that or before that?

The Witness: After that.

Trial Examiner Myers: How long after that?

The Witness: Well, now, several days, I wouldn't know exactly. [282]

RAYMOND H. LEHANEY,

a witness called by and on behalf of the Bay Cities Metal Trades Council, A. F. of L., having been duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name?

The Witness: Raymond H. Lehaney.

Mr. Janigian: How do you spell your first name?

The Witness: R-a-y-m-o-n-d.

Q. (By Mr. Janigian): What is your occupation, Mr. Lehaney?

A. Public Relations Director for the Western Congress of Teamsters covering the eleven Western States. [288]

Q. Are you employed by the Graham Ship Repair Company? A. That is right.

(Testimony of Raymond H. Lehaney.)

Q. When were you first employed by that firm and in what capacity?

A. Approximately around the week of December, the 21st or 22nd, I guess, in the capacity of Labor Relations man.

Trial Examiner Myers: 1944?

The Witness: 1944.

Q. (By Mr. Janigian): Where were you employed?

A. In Los Angeles.

Q. You were employed by whom?

A. By Mr. Graham.

Q. And at the time of your employment did Mr. Graham tell you what your duties were to be?

A. Yes. Mr. Graham said that the duties would involve labor relations and that he wished the yard to go along very well; that he intended to start here and wanted someone familiar with labor relations to handle labor relations.

Q. And will you state just what you were to do?

A. Well, I asked Mr. Graham what the duties would involve and he said I would have full charge of everything to do with the Unions, and the harmony between Union and Management.

Q. Was there any statement made with respect to the signing of a collective bargaining agreement in the course of your discussions with Mr. Graham? [289]

A. No, not at that time.

Q. Did you have any subsequent conversations

(Testimony of Raymond H. Lehaney.)

with Mr. Graham on the subject of signing a collective bargaining agreement?

A. Yes, we have had several discussions on the signing of the agreement.

Q. Did you have a conversation with Mr. Thomas Rotel some time in December or the early part of January, 1945?

A. Shortly after Christmas, I don't recollect whether it was on the 27th or 28th; I contacted Mr. Rotel and advised him that I had been retained by Mr. Graham to act as Labor Relations man for his shipyard, and that I would like to know all the necessary things pertaining to the Metal Trades agreement that was in operation in the area.

Q. I see. And you spoke with him over the telephone, did you? A. Yes, I did.

Q. And what was said with respect to an agreement by Mr. Rotel or by you?

A. Well, I believe Mr. Rotel at that time said that that was quite tentative and that perhaps we had better wait until things were actually under way and the yard was a physical actuality.

Q. Well, had Mr. Graham purchased, or taken possession of the yard at the time you talked with Mr. Rotel? [290]

A. Well, of course, I didn't know about Mr. Graham's financial arrangements in New York, because all I had to do was labor relations.

Q. No; did you know if he had taken possession, whether operating?

(Testimony of Raymond H. Lehaney.)

A. No. Oh, yes, he had taken possession of the yard, I think, but if you mean if there was work on the boats at that time, or anything, no. I believe two or three retainers there.

Q. No work on the boats?

Trial Examiner Myers: What do you mean by "retainers?"

The Witness: I mean certain people left over from the previous yard, the Judson Pacific Yard, where Mr. Johnson was, who were kept on at that time. Mr. Jim Close was one of them, and Nick Curzon, and Richards, I believe.

Q. (By Mr. Janigian): On January 2, 1945, did you have a conversation with Mr. Thomas Rotel and Mr. A. T. Wynn of the Bay Cities Metal Trades Council?

A. Yes, I did.

Q. Where was the conversation held?

A. At the Metal Trades Council at the Labor Council.

Q. In San Francisco? A. That is right.

Q. And what was said by either Mr. Rotel or Mr. Wynn?

A. We discussed the various clauses in the contracts, etc., and Mr. Rotel and Mr. Wynn pointed out to me that the contract [291] was exactly similar to the contracts established by the A. F. of L. in all the other yards in the area and that it was the standard Metal Trades agreement, to which would be attached the supplemental agreement covering ship repair as differentiated from ship con-

(Testimony of Raymond H. Lehaney.)

struction. At that time Mr. Rotel said that the standard contract forms were not available as they were at the printer's, but he had the small grey-backed books.

Q. Did he show you the small grey-backed book?

A. Yes, he did; he gave me several.

Q. He gave you several?

Q. I now show you Council's Exhibit No. 4 and ask you if that was the book that Mr. Rotel showed you?

A. That is the book.

Q. You say he gave you several copies?

A. Yes, he did.

Q. At the time did you sign any agreement?

A. Yes; we discussed the thing quite fully and we signed an agreement on a piece of paper such as this, to which this book was attached.

Trial Examiner Myers: Wait a minute. Which booklet did he show you? Was it Council's No. 4 or Council's No. 1?

Mr. Janigian: Excuse me; that is right. It is No. 1.

The Witness: Yes. [292]

Mr. Janigian: Council's Exhibit No. 4 is the new construction.

Q. Now I show you Respondent's Exhibit No. 1 and ask you if you recognize that document?

A. Yes.

Q. Tell us what it is will you?

A. This is the document that I signed; that is my signature on the thing. That is from the Graham Ship Repair and I signed it in the office of the Metal Trades Council.

(Testimony of Raymond H. Lehaney.)

Q. Did you receive a duplicate original of this Respondent's No. 1? I mean, did you have another one like this?

A. I asked him for copies; we had three extra copies of it.

Q. Did you have a signed copy for your files?

A. Yes. In fact, we had I think four signed all together, one for their files, and I think we had two for our files.

Q. You had two for your files; was there attached to it, or to the copies you had, a copy of Council's Exhibit No. 1 which is the small booklet?

A. That is right, the grey-backed booklet.

Q. Prior to signing Respondent's Exhibit No. 1 had you discussed with Mr. Graham the advisability of signing an agreement with the Bay Cities Metal Trades Council?

A. Yes, I pointed out to him that in order to operate in the territory that an agreement covering what was embodied [293] in this grey-backed booklet would have to be gone into, and on account of that fact Mr. Graham and I came over to San Francisco because I wanted him also to meet with the Council and give his version of our relationship.

Q. But prior to signing Respondent's Exhibit No. 1, the first agreement, had you discussed with Mr. Graham the advisability of signing such an agreement?

A. Yes.

Q. What discussion did you have with him on that subject?

(Testimony of Raymond H. Lehaney.)

A. Well, we discussed the A. F. of L. agreement and the way in which the mode of operations in the Bay Area was handled, and I specifically brought out the fact to Mr. Rotell the fact that in talking to him before he had advised me that the Metal Trades agreement was a closed-shop agreement which at the time included every craft in the A. F. of L.

Q. What had Mr. Graham told you with respect to any agreement as to whether or not you were to sign any such agreement prior to January 2d?

A. Oh, I think Mr. Graham will agree that he gave me full authority to sign on all agreements. As a matter of fact in Los Angeles in December when I was first hired there that was one of the specific questions I asked Mr. Graham, as to whether or not I would have full authority to sign and act as Labor Relations Director, because otherwise I couldn't take the job. Mr. Graham, in the presence of another witness, [294] Mr. Tuohy, who was with me at that time, told me I would absolutely have authority to sign; that it was not his habit in handling men to interfere with delegated authority that he had given out.

Trial Examiner Myers: Are you still in the employ of Graham Ship Repair?

The Witness: Yes. The agreement that I had with Mr. Graham was a very flexible agreement, a verbal agreement between the two of us because of that fact that I was not, or that I did not wish to leave my employment down there with the West-

(Testimony of Raymond H. Lehaney.)

ern Conference. Mr. Graham said, "Whenever I need you here you will be here, and otherwise you will be on your own time," so I have never been advised by Mr. Graham to the contrary.

Q. (By Mr. Janigian) Now, Mr. Lehaney, you mentioned a meeting on January 4th; this meeting was held——

Trial Examiner Myers: He didn't mention a meeting in January.

The Witness: I mentioned January 2d.

Mr. Janigian: I believe he mentioned it. Anyway, let it go.

Q. (By Mr. Janigian) You made mention of the fact, I believe, that you wanted to have Mr. Graham meet the boys, or words to that effect. Was there a subsequent meeting at the office of the Bay Cities Metal Trades Council? [295]

A. Yes. There were certain questions asked me by the Metal Trades Council pertaining to operation and ownership, etc., which I was unable to answer because I was not entirely familiar with Mr. Graham's financial arrangement regarding the yard. Therefore, I thought it would be necessary for him to be over there with me. Also to acquaint the gentlemen of the Metal Trades Council with the fact that I had full authority to act, etc., and in order to keep our relations harmonious.

Q. Was there such a meeting held?

A. Yes; the entire Metal Trades Council met upstairs, as I understand, and Mr. Graham and I waited in the office while the meeting went on. It

(Testimony of Raymond H. Lehaney.)

consumed some hours of time I believe, and then Mr. Rotel informed us that a sub-committee had been set up from the big meeting to meet with us in the library downstairs. So Mr. Graham and I went down stairs and met with,—well, I don't know the names of the gentlemen we met with now,—but I would say there were seven or eight and they identified themselves as International men.

Q. I see. What was discussed at this meeting?

A. The contract was discussed. Mr. Graham was asked certain questions about the operations and management, etc., of the plant and when we intended to get going, and how many machinists he would need, and whether or not the A. F. of L could supply the machinists that they stated they insisted [296] on in the contract.

Mr. Sapiro: Pardon me, will you repeat that?

Trial Examiner Myers: Will the Reporter read the question?

(The question was read by the Reporter.)

Q. (By Mr. Janigian) What did Mr. Graham say as to the number of machinists he would need?

A. I think he said at the time he would need about thirty machinists and ultimately, when the yard built up, around eighty machinists.

Q. What did the A. F. of L. representative say they could or could not supply? Did they say they could or could not supply the number of machinists?

A. Well, there was a gentleman there from the Machinists' Union—I can't think of his name; oh,

(Testimony of Raymond H. Lehaney.)

yes, a Mr. Truax—Mr. Truax, and he stated that they could supply the A. F. of L. machinists and that they would immediately start sending them to the yard, but he could not get the entire amount within the time, within the next day or two; that it would probably take a little longer.

Q. I asked you, Mr. Lehaney, whether or not you advised Mr. Graham subsequent to your discussion of Respondent's Exhibit No. 1 that you had signed such an agreement.

A. Mr. Janigian, your "Respondent's No. 1" is somewhat confusing in my mind. [297]

Q. This document which I showed you; the first that was signed on January 2. Did you advise Mr. Graham that you signed this?

A. Yes; Mr. Graham knew that I signed it.

Q. Did you tell him?

A. Sure, and I brought over the grey-backed book, such as this. I had been given about eight or nine by Mr. Rotel.

Q. Did you give Mr. Graham copies of the grey-backed book?

A. Yes. He had a copy; also to Nick Curzon, the foreman over there; also gave a copy to Jim Close, and there was one other copy which I gave to Mr. Bates.

Q. Did you give to Mr. Graham a copy of this document which is Respondent's Exhibit No. 1?

A. No, because at that time that was the only one there was outside of the one for our files and

(Testimony of Raymond H. Lehaney.)

the one the Metal Trades Council had. That is all there was.

Q. But you did have one for your files?

A. That is right.

Q. Did you carry it with you, or was it among the records of the Graham Ship Repair Company?

A. I had it over in the yard.

Trial Examiner Myers: Whereabouts in the yard?

The Witness: I gave it to the bookkeeper, Mr. Bates, for the files.

Q. (By Mr. Janigian) I see. Now following this meeting [298] of January 4th—

Mr. Sapiro: (interposing) He didn't say it was January 4th.

Q. (By Mr. Janigian) When was the second meeting?

A. On January 4th; the meeting of which I spoke as meeting upstairs and the sub-committee meeting downstairs.

Q. That is the meeting we had in mind. Following the second meeting were any A. F. of L. machinists despatched to the yard, do you know?

A. Well, I myself didn't know that any were despatched to the yard at that time, although I had gotten into altercations with Mr. Rotel when he informed me that three or four machinists had been sent to the yard and refused employment, and I checked at the yard and couldn't find anybody over there that would say they had sent them away. At that time I called Mr. Rotel back and

(Testimony of Raymond H. Lehaney.)

we had a few heated words concerning it. The incident happened again with two other men, and then Mr. Truax came to talk to me and said that he wondered why I wouldn't take the men on. I said that I had seen no men.

Q. Mr. Lehaney, did you have a conversation with Mr. Close on this subject?

A. Yes, Mr. Close said he had not seen the men either.

Q. I see. Following this meeting of January 4, did you discuss with Mr. Graham the advisability of signing a separate [299] agreement with Local 1304 CIO Machinists' Union represented by Mr. Smith?

A. I don't believe we discussed the advisability; I think the matter came up and we talked about it, and I advised Mr. Graham that I had already signed the contract as he had authorized me to do with the A. F. of L. and, therefore, he couldn't also enter into negotiations with the CIO.

Trial Examiner Myers: What did Mr. Graham say about it?

The Witness: Mr. Graham at that time said, "Well, I guess you know what is best in these things; the only thing I am concerned with is that we get along harmoniously and get the work in and out of the yard, and get it done, because I have my investment tied up." He wanted to get it along, and we left it at that.

Q. (By Mr. Janigian) Did you or Mr. Gra-

(Testimony of Raymond H. Lehaney.)

ham authorize Mr. Close to sign a separate agreement with Local 1304?

A. No, I don't believe Mr. Graham did.

Q. Did you authorize Mr. Graham to sign such an agreement?

A. No; as a matter of fact, I told Mr. Close that if he were going to sign such an agreement he could go ahead and sign it, but I wouldn't sign it.

Q. Well, were you still the Industrial Relations Director at the time you made that statement?

A. Labor Relations.

Q. Or Labor Relations? [300]

A. Absolutely.

Trial Examiner Myers: You still are?

The Witness: I still am, as far as I know.

Q. (By Mr. Janigian) Mr. Lehaney, I show you Council's Exhibit No. 2 and ask you to look at it and tell me if you signed the original of that document.

A. That is the document; that is my signature.

Q. You signed that document when?

A. We signed that, I think it would be somewhere between the tenth and twelfth of January. I am not quite sure of the date.

Q. I see.

Trial Examiner Myers: That is Council's Exhibit No. 2, is that it?

Mr. Janigian: Yes.

Q. (By Mr. Janigian) During the month of January did you ever have any conversations with

(Testimony of Raymond H. Lehaney.)

Mr. James Smith, Business Representative of the CIO Machinists' Union?

A. Yes; I had two or three telephone conversations with Mr. Smith and met Mr. Smith in a meeting in the Graham Ship Yard with Mr. Graham present, Mr. Fogel,—F-o-g-e-l, I believe it is—and Mr. Close.

Trial Examiner Myers: Was Mr. Johnson there?

The Witness: Mr. Johnson, right.

Q. (By Mr. Janigian) About when was this meeting held? [301]

A. Well, I would say that it would be about the 22d or 23d of January.

Q. And what was discussed at this meeting, do you know?

A. Yes; at this meeting—

Trial Examiner Myers: (interposing) That would be January 16th. I think that is the date most of the witnesses testified to.

The Witness: Yes.

Q. (By Mr. Janigian) What was discussed at that meeting? What was said by Mr. Smith and what was said by you and the others? Can you tell us that?

A. Yes. Mr. Smith and Mr. Graham talked briefly in there. I don't know what they said. Mr. Graham, Mr. Fogel and myself talked over at the tool shed together where we had the meeting and we were going to attempt to iron out the situation by pointing out to Mr. Smith that we had already

(Testimony of Raymond H. Lehaney.)

signed the A. F. of L. agreement. Mr. Smith said, "That is nothing but a backdoor agreement." I characterized his remark as a "lie". Mr. Smith then said—and I don't quote him verbatim as I don't remember exactly, but it was to this effect: "That by God the CIO Machinists were going to come in and work in that yard; that they were in all other yards around there and this yard wasn't going to be any different; that if they didn't there would be a picket line in the morning around the Graham Ship Repair Yard." [302]

Q. Did you say anything to that?

A. Yes, I told Mr. Smith to put the picket line on the yard.

Q. Did you have a conversation with Mr. Graham on or about the 25th day of January, 1945?

A. Well, Mr. Graham and I had many conversations during the time.

Trial Examiner Myers: This day is when there were a lot of machinists, and some were hired and some weren't.

Mr. Janigian: They were A. F. of L.

Q. (By Mr. Janigian) The day the A. F. of L. machinists reported?

A. There were CIO machinists in the yard that morning. Mr. Graham and I had been hot on the trail of the Richmond Lodge of Machinists, A. F. of L. and wanted more men, and we thought that we wanted even more men than they could supply at that time; all the men he could possibly shove into the yard, to the extent of putting continual

(Testimony of Raymond H. Lehaney.)

pressure on. That morning Mr. Graham suggested that we go out and count the cards around the time punch out there. We collected the cards and counted them and we found that there were—wait a minute; let me go back a little. We were hollering about the absenteeism among the A. F. of L. machinists in the yard; that is what we were hollering about, and we went out and counted the cards and found there were some thirty-two or [303] thirty-three machinists in total in the yard. We brought the cards back in and I got on the 'phone and called the Machinists' Union and three of their representatives immediately came down.

Mr. Royster: Specify what they were.

The Witness: A. F. of L. of Richmond, and three of their representatives came down. One of the things we said was this absenteeism, this absentee condition couldn't possibly continue because the yard couldn't stand this kind of thing when we need machinists. So they started to go through the cards, and fourteen of the machinists were found to be CIO machinists from Mr. Smith's local. Mr. Smith had called me on the telephone and he said——

Q. (By Mr. Janigian) (interposing) When did he call you? A. I believe that very day.

Q. On the 25th?

A. Approximately, I am not sure of the day; it could have been the 24th. He said that he had been waiting a long time and he was pretty tired of our temporizing and stalling tactics, etc., and

(Testimony of Raymond H. Lehaney.)

unless something was going to be done, some action was going to be taken. I told him at that time we had A. F. of L. machinists coming into the yard.

Q. What did he say?

A. He said, "I'll come down and pull the machinists right out of there." [304]

Q. Did Smith call up the Yard then following that statement?

A. Yes, Mr. Smith subsequently came down—I don't know how soon—and took the machinists, the CIO men out of the Yard.

Q. Did the CIO machinists come back to work subsequently to that time, do you know?

A. That I couldn't say; I don't recollect.

Q. Now was there a picket line placed?

A. No, there was no picket line placed.

Q. Now from that time on, were the machinists that were cleared to that Yard from the A. F. of L. Machinists' Union 284?

A. Correct. One machinist put on as Leaderman originated out of Local 68 and cleared through Richmond Lodge. The name was Renner, I believe.

Q. Now at this first meeting that you had with Mr. Smith, did he say anything to you with respect to an agreement he wanted Graham Ship Repair Company to sign with Lodge 1304?

A. You are talking about the first meeting I had with Mr. Smith?

Q. Yes.

A. Well, at that time Mr. Smith was very nice;

(Testimony of Raymond H. Lehaney.)

he came down and said as the Yard was starting up he wanted to know if we were going to continue with CIO as Johnson had previously, [305] and I said at that time—this was either the second of January, or the third, or right close to there—that the Yard was barely going, and at that time Mr. Smith said he would call back again and contact us again, etc.

Trial Examiner Myers: What did you tell him?

The Witness: We told Mr. Smith at that time that we would make up our minds and call him back within the next day or two.

Q. (By Mr. Janigian) That was January 3d?

A. About the third. It was previously to the meeting that Mr. Graham and I had had with the Metal Trades Council.

Q. Did you have any further conversation with Mr. Smith with respect to any agreement which he wished to have you sign with Lodge 1304?

A. Only that Mr. Smith on the telephone said, —I don't believe I saw him again outside of the time in the tool shed, but I talked to him over the 'phone and only to the extent that he insisted on the signing of the CIO agreement for the covering of the machinists in the Yard.

Q. When was the last time Mr. Smith talked to you on the subject of signing the CIO agreement?

A. I'd say probably around January 25th or 26th, at which time Mr. Smith pointed out that a portion of our work had to go to the other Yards where the CIO machinists were and that when that

(Testimony of Raymond H. Lehaney.)

work got over there there would be a lot of trouble [306] about it.

Trial Examiner Myers: What did you tell Mr. Smith during that telephone conversation?

The Witness: I told Mr. Smith, previous to that time, that we had already informed them we had signed a complete A. F. of L. agreement and already removed his men.

Trial Examiner Myers: You had a couple of telephone calls you said with Mr. Smith.

The Witness: That is right.

Trial Examiner Myers: Before this meeting of January 16th?

The Witness: Yes. Let's see, we had telephone calls from Mr. Smith, I would say, continually, at intermittent intervals.

Trial Examiner Myers: About the agreement that he wanted you to enter into?

The Witness: Yes. His story always was the same; he wished us to sign the agreement regardless. He characterized the A. F. of L. agreement as a back-door agreement.

Trial Examiner Myers: What did you tell him?

The Witness: We told—

Trial Examiner Myers: Who are "we"?

The Witness: I told him—I will clarify that—that we had signed a closed-shop agreement with the A. F. of L. covering all crafts with the A. F. of L. Metal Trades Council. [307]

Trial Examiner Myers: Anything else?

(Testimony of Raymond H. Lehaney.)

The Witness: That is all. Mr. Smith and I were very short and snappy over the 'phone.

Trial Examiner Myers: Did you tell him you wouldn't sign any agreement with him?

The Witness: I continued to tell him we couldn't because we would be placed in the paradoxical position of having signed a closed-shop agreement with one and attempting to negotiate an agreement with a dual Union.

Q. (By Mr. Janigian) Mr. Lehaney, prior to January 26th did you discuss with Mr. Graham the advisability, or did Mr. Graham discuss with you the advisability of signing a separate agreement with Mr. Smith's Oakland Union?

A. I believe the matter was brought up, yes.

Q. What did Mr. Graham say on the subject?

A. Mr. Graham was very worried that the machinists that the A. F. of L. was supplying wasn't sufficient to enable him to keep the work going that he expected to be in the Yard, and he wondered if we couldn't call up the Metal Trades Council and ask them to make a concession to us, meaning the Graham Ship Repair Company to abrogate the machinists into the agreement with the A. F. of L. in order to bring the CIO machinists into the Yard.

Q. And did you take up that request with the A. F. of L. Metal Trades Council? [308]

A. Yes, I did call Mr. Wynn one time and talked to him and referred him to Mr. Rotel who wasn't in at the time I called, but subsequently

(Testimony of Raymond H. Lehaney.)

around eleven or twelve o'clock at night he called me and I gave him the message and he said, "We'll be perfectly willing; we don't want to be unreasonable; if Mr. Graham wanted to come and meet with the Metal Trades Council and explain everything, or if there was anything in the contract that in any way he felt should be abrogated and state his reasons the Council would be glad to listen to him.

Q. Mr. Lehaney, do you recall the meeting that was held on the second floor of the San Francisco Labor Temple on January 25th, in the afternoon of January 25th, at which meeting I was present?

A. Yes.

Q. Do you know what was discussed at that meeting?

A. At that meeting it was discussed whether or not the A. F. of L. would relent in its position on the machinists and the C.I.O. machinists and allow the C.I.O. machinists to come in. Mr. Graham was asked if there were any reasons he could bring forth that would enable the A. F. of L. to consider such a proposal, and he advanced his reasons and arguments at that time, and——

Trial Examiner Myers: (Interposing): What were they?

The Witness: Well, they were that he didn't feel that we were getting enough machinists to take care of the work, [309] and secondly, on the other hand, the quality of machinists he declared in his estimation was inferior to the C.I.O., and there seemed to be, because of some reason or other that

(Testimony of Raymond H. Lehaney.)

he couldn't put his finger on, a dearth of work to come into the yard after the ships that were presently in the yard had been sent on their way.

If I may digress, I may add that at that time the ships, the day before and that day, had all gone out of the yard. At that time I believe there were only two tugs left in the yard, the Sombrero Key and Petit Menen.

Trial Examiner Myers: What did the A. F. of L. say?

The Witness: The A. F. of L. reiterated the position they had indicated first and pointed out to Mr. Graham that in the meeting of January 2d the point was brought up about the machinists and that it was covering the entire A. F. of L. crafts working in the yard, and they felt the reasons he advanced at that time—at the time of the meeting I am talking about now—were not of sufficient depth or character to enable them to abrogate an agreement that had been signed in good faith.

Trial Examiner Myers: Did they say anything about what would happen if Mr. Graham didn't get rid of the CIO machinists?

The Witness: What do you mean "get rid of the CIO machinists"? [310]

Trial Examiner Myers: He had some C.I.O. machinists.

The Witness: Not at that time I don't think we had any C.I.O. machinists; only A. F. of L. then.

Q. (By Mr. Janigian): Well, Mr. Lehaney, on the subject of supplying a sufficient number of ma-

(Testimony of Raymond H. Lehaney.)

chinists, what was said by the representative of the machinists' union as to whether or not they had been able to supply the yard with a sufficient number?

A. The machinists at that meeting stated they could supply any number up to a hundred and twenty, and pointed out that they had been building up the number of machinists that had come into the yard and would continue to do so, but the point that got to be the main motive of the meeting was the idea as to why the ships weren't going into the Graham Ship Repair Yard.

Trial Examiner Myers: You are sure that this meeting took place on January 25th?

The Witness: Yes, it did.

Q. (By Mr. Janigian): At that meeting on January 25th——

A. (Interposing): It might have been the 24th or the 26th, but somewhere in there.

Trial Examiner Myers: The change of machinists at the plant on the 25th was more or less agreed upon in the record; that is why I am fixing the date.

The Witness: Yes, I think it was about the 25th.

Q. (By Mr. Janigian): I have in mind the meeting at which I was present and which was held on the 25th day of January.

A. The only meeting at which we were both present to my knowledge, Mr. Janigian, was that meeting.

Q. January 25th, and at that time was any discussion had with respect to the demands that were

(Testimony of Raymond H. Lehaney.)

served upon the Graham Ship Repair Company by Mr. Smith?

A. Yes, Mr. Graham brought out the fact that Mr. Smith had been calling him and talking to him and telling him that unless the C.I.O. machinists were in the yard, or got back into the yard that no repairs would be done in the area.

Q. I see. Was there any discussion at that meeting of a separate agreement to be signed with Local 1304?

A. Yes, it was brought up and mentioned to the A. F. of L. but the A. F. of L. said they did not see it at the time, that there was any reason good or deep enough to abrogate the agreement.

Q. Now you mentioned that Mr. Smith had told you on or about the 25th of January that he was coming down to pull his men, his machinists.

A. That was before that, Mr. Janigian, because at the time of our meeting there where you were and where I was, at that time there was nothing in the yard but A. F. of L. men. The pulling must have been done prior to that time, because at that time, as a matter of fact, we were laying off men in the [312] yard because we had but the two boats left in there after the work was done; the day before there were four or five boats that went out the one day and there was no other work promised in the yard, and Mr. Graham felt that was due to the fact that probably some influence was being wielded by the C.I.O.

Mr. Stimmel: I object to that.

(Testimony of Raymond H. Lehaney.)

Trial Examiner Myers: Did Mr. Graham say it?

The Witness: Yes, and I think he said that he felt that unless the A. F. of L. relented in its position it would put him in the spot of losing his investment in the yard and all he had worked to build up over there.

Mr. Janigian: I think that is all.

Trial Examiner Myers: Any questions, Mr. Stimmel?

Mr. Stimmel: Yes, I would like to ask the gentleman a few questions.

Cross Examination

Q. (By Mr. Stimmel): Mr. Lehaney, when you first arrived in San Francisco did you investigate the situation in the Estuary District with regard to the labor relations possibility for that yard? That is, the relation of machinists to those yards and the Master Contracts of the A. F. of L. as it affected those several yards on the Estuary?

A. Yes, I did.

Q. Did you advise Mr. Graham with regard to that situation and the possibility that he might be called upon to adhere to [313] the custom that prevailed in that district? That is, sign a contract with the A. F. of L. with regard to all crafts except machinists and go along with the C.I.O. on a new contract?

A. No, I didn't. Could I have the question again?

Trial Examiner Myers: Will the reporter please read the question?

(Testimony of Raymond H. Lehaney.)

(The last question was read by the reporter.)

The Witness: I talked to a few of my own people. By "my own people" I mean the Teamsters and Warehousemen in this area. I also talked to Mr. Rotel who at the time informed me that this was a brand new yard starting up, the Graham Ship Repair, that it came under a different classification entirely than the yards already established around the place; that undoubtedly there would be no new yards start up after that time, and that yard was the only yard of that character that would remain in the Estuary at that time, and that the A. F. of L. felt called upon in this regard to insist upon its closed-shop agreement, as was specified in the Metal Trades agreement covered by this blue booklet here (referring to booklet entitled "Ship Repair Agreement") with the supplemental Ship Repair Agreement, as had been agreed upon in Portland.

Q. Did you discuss the situation with Mr. Graham before January 2d?

A. Yes, I did. As a matter of fact, Mr. Graham and I [314] after discussing it—Mr. Graham at that time agreed with me—went down and boarded one of the landing boats in there, and went up on the forecastle and met with Mr. Close who was up there at the time. Mr. Close, Mr. Graham and I talked for a while, and Mr. Graham asked me to excuse him and he and Mr. Close talked together, and then we went down the stairs. On the way back up he

(Testimony of Raymond H. Lehaney.)

told me Mr. Close felt we should have the C.I.O. machinists in there.

I might add, briefly, that when I first came to the yard Mr. Graham had told me that Mr. Close and Mr. Johnson handled quite a bit of personnel of the yard and that I might contact a little antagonism because I had full charge of the labor relations in the yard, but that was not to worry me.

Q. (By Mr. Stimmel): At the time the discussion took place did Mr. Graham instruct you to sign a contract with both the C.I.O. and the A. F. of L.?

A. No, he absolutely didn't. As a matter of fact, Mr. Graham told me that I had full authority and that he would be guided by my advice in the matter, what I thought best for the yard.

Q. Did Mr. Close at any time contact you and state to you that Mr. Graham had instructed him to sign with C.I.O. and checking his authority to do so?

A. No. I was never conscious of the fact that Mr. Graham had stepped over my head in that matter at all. This is the [315] first time I ever heard of it.

Q. When did you tell Mr. Close that if there was a C.I.O. contract to be signed he could sign it but you wouldn't?

A. I might say that was somewhere between probably January 20th and the 25th, that week.

Q. Did you at any time show the contract to Mr. Graham that you signed, or this preliminary agreement, we'll say? That is, before you signed it?

A. Yes, Mr. Graham was familiar with it, and

(Testimony of Raymond H. Lehaney.)

not only this contract but the separate contract we discussed, that we executed and signed; I signed it while Mr. Graham was standing there with the warehousemen and the teamsters, to cover the warehousemen and the teamsters in the yard. At that time Mr. Graham said to me, "Do you want to sign it or shall I"? I said, "Well, if you want to, it is allright with me." He said, "You signed this, so you might as well sign this."

Q. That is different?

A. Supplemental to this; it covers the teamsters and warehousemen who are not covered under this agreement, and I merely stated this to show that Mr. Graham had delegated the authority to me and was familiar with the contracts.

Q. Did you before signing that document——

Trial Examiner Myers: (Interposing): What document are you referring to, the one dated January 2d?

Mr. Stimmel: Yes. [316]

Q. (By Mr. Stimmel): Did you before signing that document show it to Mr. Graham or discuss the contents with him?

A. Yes, I did. I discussed the contents with Mr. Graham and he told me I had full authority to go ahead, whatever I thought in the matter. I told him it was a regular standard contract enforced by the Metal Trades Council in all the shipyards in the area.

Mr. Royster: Let the record show as to what document the witness is referring.

(Testimony of Raymond H. Lehaney.)

Trial Examiner Myers: Respondent's Exhibit No. 1.

Q. (By Mr. Stimmel): Did you show to Mr. Graham at the time the document was signed the pamphlets that were supposedly or were attached to it, to this instrument? A. Yes.

Trial Examiner Myers: When did you show it to him?

The Witness: I know that because at the time Mr. Bates, who was the bookkeeper, made up a list for me which I was to submit to the War Labor Board, the War Manpower Commission, on the rates that were to be in effect in the yard, and the rates that Mr. Bates made up for me were not accurate according to the grey book which I had at that time. So I pointed out to Mr. Graham that in the grey book the calling was for such and such a rate, and that Mr. Bates' figure did not agree with that rate at all.

Trial Examiner Myers: When did you show the contracts [317] to Mr. Graham?

The Witness: Mr. Graham saw the contracts when I signed them.

Trial Examiner Myers: Was he there on January 2d?

The Witness: When I signed the agreement?

Trial Examiner Myers: Yes.

The Witness: No, he wasn't.

Trial Examiner Myers: When did you show them to him?

The Witness: I discussed it with him previous

(Testimony of Raymond H. Lehaney.)

to that time and previous to the signing of the contract on the 12th which was to take the place of this one. This came back again. Mr. Graham was fully cognizant of the fact I was signing it and he authorized me to do so.

Trial Examiner Myers: When was the first time that you saw this little grey book, as you call it?

The Witness: On the morning of the second of January at a meeting at nine o'clock with Mr. Rotel. I took this book over across the Bay.

Trial Examiner Myers: That was the first time that you saw it?

The Witness: That is right.

Trial Examiner Myers: Then you didn't discuss it with Mr. Graham prior to January 2d, is that right?

The Witness: That is right.

Q. (By Mr. Stimmel): Did you read the contents of the [318] pamphlet before you signed it?

A. Entirely?

Q. Yes. A. No, I didn't.

Q. Did you know what was in it?

A. Yes, I did.

Q. How did you know what was in it if you had never read it?

A. First of all, I had been advised by a teamster returning as to the full contents in the matter, consulted with our warehousemen and teamsters who are known as signatories, but supplemental to the Master Agreement up in the area as to the quirks and kinks in it.

(Testimony of Raymond H. Lehaney.)

Q. How did you know that was the document you discussed with your attorney?

A. If I disagree with what my attorney told me I either call him a "liar" or get a new attorney.

Q. There could be a mistake.

Mr. Janigian: Now he is arguing with the witness. I object.

Trial Examiner Myers: I will sustain it.

Q. (By Mr. Stimmel): Mr. Lehaney, on what date were you last at the shipyard?

A. I was over at the shipyard about February 14th.

Q. What date were you there previously?

A. I had been there probably around the 6th, or the 8th. [319]

Q. You hadn't been there between the 8th and the 25th of January?

A. I am a little confused. I wonder if you could state it again.

Q. When were you last at the Graham shipyard? A. February 14th.

Q. What date previous to February 14th were you at the shipyard? A. I beg your pardon?

Q. What date previous to that were you at the shipyard?

A. Approximately around the 6th or 7th or 8th, around there somewhere.

Q. Were you at the shipyard on January 25th?

A. Yes. That was the date of the meeting in San Francisco. As a matter of fact, I had lunch

(Testimony of Raymond H. Lehaney.)

that day with the plant manager; came over with him.

Q. Well, on that date, did you instruct Mr. Close to the effect that if the machinists, C.I.O., were not discontinued that there would be a strike?

A. At that time I don't think I was talking to Mr. Close.

Q. You didn't have any conversation with him on that date?

A. No, Mr. Close didn't talk to me over there after the first period of our talking back and forth other than to say "good morning" and "good evening."

Q. Did you have a conversation on that day with Mr. [320] Graham?

A. Yes, I talked with Mr. Graham very many times.

Q. Did you discuss the matter of the C.I.O. machinists being in the yard at that time?

A. At that time to my knowledge the C.I.O. machinists were not in the yard.

Trial Examiner Myers: You have your dates a little mixed; they were in the yard on the 25th according to the testimony.

The Witness: I don't think they were, Mr. Examiner; I don't think so.

Q. (By Mr. Stimmel): Didn't you know, Mr. Lehaney, only C.I.O. machinists were hired up until the 25th of January by the Graham Ship Repair?

A. So far as that is concerned, if they were they were hired either by Mr. Close or Mr. Graham be-

(Testimony of Raymond H. Lehaney.)

hind my back and I had no knowledge they were. I thought the A. F. of L. machinists were brought into the yard and if they weren't I am surprised to hear it.

Q. Mr. Lehaney, about the 12th of January did you advise Mr. Close that unless a C.I.O. contract was produced and shown to you by the 15th that you would have to sign a contract with the A. F. of L. on the 15th?

A. I would say that was incompetent, irrelevant and immaterial, because I certainly could not have said any such [321] thing.

Q. I am asking you the question.

A. That would be my answer, Mr. Stimmel.

Trial Examiner Myers: You mean you didn't tell him that?

The Witness: I think it is ridiculous to answer.

Trial Examiner Myers: Did you say it? We want to get along.

The Witness: No, absolutely. If I wanted to go through that I'd sign the C.I.O. agreement to begin with.

Mr. Stimmel: That is all.

Trial Examiner Myers: Any questions, Mr. Royster?

Mr. Royster: No.

Trial Examiner Myers: Any questions Mr.

Mr. Sapiro: Yes.

(Testimony of Raymond H. Lehaney.)

Cross Examination

Q. (By Mr. Sapiro): Do you know how Mr. Graham came to contact you in December of 1944 in Los Angeles?

A. Do I know how?

Q. Yes. How did that come about?

A. Through a mutual friend of ours.

Q. Who was the friend?

A. Should I answer that? Should I involve a man not involved in this?

Mr. Janigian: I object to the question as being incompetent, irrelevant and immaterial.

Trial Examiner Myers: I will sustain it.

Q. (By Mr. Sapiro): Now did Mr. Graham ever tell you to investigate conditions of labor in the Bay Area and report to him as to Union affiliations of these various crafts?

A. No, sir.

Q. So you made no report to him about that, of course?

A. No, not "of course," Mr. Sapiro, because we discussed the matter after I had made my own investigation.

Q. Did your investigation show that in all the Ship Repair Yards in Alameda County that there were separate contracts for machinists with the C.I.O. organization?

A. Yes, I found in my investigation that there was a decision handed down called the "Rosenshine Decision" I believe, which specifically mentioned five certain yards, maybe six, but I believe five. That was called the "Rosenshine Decision" and gave to the C.I.O. the jurisdiction in those specified

(Testimony of Raymond H. Lehaney.)

yards. My attorney informed me that the new shipyard going in there was a completely different arrangement than any held in the Bay Area before.

Trial Examiner Myers: When you refer to your attorney do you mean some friend of yours?

The Witness: No, I mean the official attorney for the Teamsters' International. [323]

Q. (By Mr. Sapiro): Judson had a contract for C.I.O. machinists?

A. Yes, I knew that and my investigation showed me that.

Q. I asked you whether you knew that.

A. Yes.

Q. That is the answer I asked you for.

Mr. Janigian: He has a right to explain it.

Trial Examiner Myers: Gentlemen, gentlemen.

The Witness: I want to show that I did make the investigation.

Trial Examiner Myers: All right.

The Witness: I found this to be the case: First of all, the Judson Yard under Mr. Johnson was doing a different type of work than Mr. Graham intended to do, which was repair work. I found out also that in back of the Judson Yard was a whole seventeen months or more of terrific labor trouble in the yard between the previous commitments and between the A. F. of L. Metal Trades and the C.I.O. and it was to Mr. Graham's interest to avoid that difficulty.

Q. (By Mr. Sapiro): I think you were present at the time Mr. Johnson was there at the meetings?

(Testimony of Raymond H. Lehaney.)

A. Are you referring to the meeting in the tool shed?

Q. Yes. A. Yes.

Q. Did you hear Mr. Johnson say that he thought it would be a good idea to sign up with the C.I.O. local; that they had gotten along very well with the C.I.O.?

A. Mr. Johnson made that statement, substantially. I think he said that he believed that Mr. Graham should sign with the C.I.O. because he had always gotten along with Mr. Smith and that Mr. Smith and he had had very amicable relations as far as the C.I.O. was concerned and he thought very highly of Mr. Smith.

Q. Now can you give us the date, that is the first time you ever saw Mr. Smith personally face to face?

A. I think it was around, well, just about the first or second day over in the yard.

Trial Examiner Myers: You mean after the first of the year?

The Witness: Yes.

Q. (By Mr. Sapiro): When did you open the yard?

A. We opened the yard on the first. Mr. Graham had already [325] been in the yard prior to that time; I believe two or three days.

Q. How many men were working in the yard on the first?

A. Approximately, I'd say, seventeen to twenty men.

(Testimony of Raymond H. Lehaney.)

Q. On the first day of January?

A. That is right.

Q. 1945? A. That is right.

Q. How many machinists were working there at that time?

A. I believe there were three C.I.O. machinists in the yard at the time, which Mr. Graham explained to me he had to carry over due to the manpower conditions imposed upon him; that the men from the Judson Pacific Yard did not clear and he had to keep them on temporarily.

Q. Did he use the word "temporarily"?

A. I think he did, yes.

Q. Did Mr. Graham ever tell you that due to the commitments he had with the Navy he was obligated to rehire all former employees of Judson?

A. No, sir. Mr. Graham explained to me that he had a ceiling put on him at that time; they were beginning with a hundred and forty and that the ceiling would gradually go up as the work came into the yard, and they had to clear and a certain percentage of this had to be the Judson Pacific Yard hold-over until such time as the manpower regulations governing [326] his up-ceiling could be put into effect.

Q. Did he say "hold-over" or "former employees"?

A. I don't know about that. It could have been "former employees."

Trial Examiner Myers: They weren't former employees.

(Testimony of Raymond H. Lehaney.)

The Witness: They were Johnson's men, not former employees of Mr. Graham.

Q. (By Mr. Sapiro): All right. You say that on the morning of the 25th there were thirty machinists' cards in the rack?

A. Yes, maybe thirty-two.

Q. You are quite positive about that?

A. No, I am not positive; between twenty-nine and thirty-two.

Trial Examiner Myers: I think the witness has the dates wrong. According to the book there weren't that many. We have the transcript.

The Witness: Maybe I am off on the date then. I still think that the day we had the meeting we had A. F. of L. machinists in the yard and no C.I.O.

Trial Examiner Myers: That might be true, but not on the 25th.

The Witness: Well, I just am back from Washington where I have had everything thrown at me.

Trial Examiner Myers: I realize that. We have the [327] data from the books and are a little more familiar with it.

Q. Were you present at the meeting at the Labor Council—I think the date was the 16th of January, 1945—in which Mr. Graham was called upon and charges were made that he was hiring C.I.O. machinists in violation of the agreement?

A. I believe he was asked this—if I am correct—if Mr. Close was hiring those men in there, because when we were there Mr. Rotel jumped on me and asked me if I knew whether or not we were in vio-

(Testimony of Raymond H. Lehaney.)

lation of the agreement. I said, "Certainly not," and at that time Mr. Graham had not to my knowledge done any hiring of any machinists over there.

Q. Did Mr. Graham at that time say that that condition would be remedied?

A. What condition?

Q. Hiring of C.I.O. machinists, the charge that was made against him?

A. I didn't know charges were made. It was a question that was brought up and discussed on the floor.

Q. What was said about Graham Ship Repair hiring C.I.O. machinists?

A. I believe Mr. Graham said that to the best of his knowledge there were A. F. of L. men in there.

Q. That is your recollection?

A. That is my recollection, Mr. Sapiro.

Q. You said something about this document going to the [328] War Manpower Commission; what was that document?

A. That was the set of rates you have to set up in order to send it over. Mr. Graham had asked me to make it up to be sure to have it in there. I called Lt. Buckley of the Naval Accounting Department and he told me how to make it up and where to send it.

Q. Was there a question in there as to where you expected to get your employees from, the source of your labor, in that questionnaire, or that document?

(Testimony of Raymond H. Lehaney.)

A. I don't think you understand what it was. It was a preliminary make-up that Mr. Bates, the bookkeeper, had made up of what he thought the rates should be that we should pay to the men in the yard; just for my information on it. I questioned it because it differed from the agreement that we had here.

Trial Examiner Myers: All you know about that was the schedule of rates?

The Witness: That is right, the wage rates.

Q. (By Mr. Sapiro): Did you know that, or do you know now, that Mr. Graham had filed a document with the War Manpower Commission which had these questions in it? A. No, I didn't.

Q. Will you please let me finish the question?

A. I beg your pardon.

Q. He said that he expected to get the machinists from the [329] C.I.O. and all the other crafts from the A. F. of L.? Have you any knowledge of any such document being filed by Mr. Graham?

A. Not to my knowledge. [330]

Trial Examiner Myers: Does anyone want to call any other witnesses or introduce any other evidence or any motions, gentlemen?

Mr. Royster: I have a couple of motions, Mr. Examiner.

My first is to amend the Complaint in certain respects. The Board desires to strike paragraph 10 from the Complaint. Paragraph 10 is the paragraph which alleges that the machinist employees struck on January 25, 1945.

Trial Examiner Myers: You mean C. I. O. machinists?

Mr. Royster: Yes, C.I.O. machinists.

There has been a complete absence of proof that any such strike occurred. For that reason I move we strike it from the Complaint.

Trial Examiner Myers: Any objection?

Mr. Janigian: Yes, I would like to object to the amendment because that paragraph is in conformity with the allegations of the charge to the effect that these employees left [339] by reason of the unfair labor practices.

Trial Examiner Myers: Did I understand your motion is that you want to strike all the allegations in the Complaint with reference to the alleged strike?

Mr. Royster: Yes. I phrased it in the fashion I did, I intended to make a supplemental motion to change the language in paragraphs 9 and 11.

Mr. Janigian: My objection is predicated on the proposition that there is evidence that there was either a strike or a desire on the part of these machinists not to work any longer.

Now, we have Mr. Lehaney's testimony to the effect that Mr. Smith told him that he was going to come down to get his machinists, and we have the testimony of these witnesses who testified that they would not work along with A. F. of L. men, and I think if you consider the evidence by and large on the basis of the testimony given by all of the witnesses, I believe you must conclude that they left, the machinists left their employment and that they

were not fired, they left their employment because A. F. of L. machinists were coming on the next shift.

The Board certainly knew what the circumstances were and what the facts were before it prepared its Complaint, and I do not believe it should be permitted to recede from a position which it deliberately took after two months of investigation. [340]

Trial Examiner Myers: I will grant the motion.

Mr. Royster: That motion being granted, I wish further to move, then, that the second from the last line in paragraph 9 of the Complaint which now reads, starting at the beginning of that line, "Council thereby terminating the employment of all employees." That is paragraph 9, the second to the last line of paragraph 9.

Trial Examiner Myers: What do you mean, on page 4?

Mr. Royster: It is page 5, Mr. Examiner, paragraph 9, near the top of the page. It is the second before the last line, and it starts with the word "Council" capitalized.

I move to amend that line to read "Council and discharged the employees within."

Trial Examiner Myers: Within what?

Mr. Royster: Then it follows into the next line: "The unit described in paragraph III, solely because of their membership in the Union."

Mr. Janigian: Are you striking anything from that?

Mr. Royster: Yes, I am amending it to read in

the fashion I gave you and thus striking the words "thereby terminating employment of all."

Mr. Stimmel: What line is that? What page?

Mr. Royster: That is page 5, fourth line from the top of the page.

Is my motion to amend clear now? [341]

Mr. Janigian: "Council and discharged the employees within the unit."

Mr. Royster: That is right.

Trial Examiner Myers: Any objection?

Mr. Stimmel: We will object to that on the ground that no employees were replaced on the 25th and that the employees failed to show up on the 26th for work and that therefore respondents were forced to call for other men.

Trial Examiner Myers: I will overrule the objection and grant the motion.

Is there any other motion?

Mr. Royster: I have a further motion, Mr. Examiner.

With respect to paragraph 11 of the Complaint, the third line of the paragraph after the word "said," which is the first word in the third line of paragraph 11, I wish to interpolate "discharged" and to strike the words following "Employees who were on strike."

Trial Examiner Myers: I think you had better stop with a lot of quotes and end quotes. Nobody knows what it is. If you want to read a new paragraph in there, it is best to do that. We won't know on the record which words you want stricken.

Mr. Royster: Well, then, I move to strike para-

graph 11 from the Complaint and to substitute therefore the following:

“On or about February 14, and February 18, 1945, and on [342] several occasions thereafter, the Union, acting on behalf of said discharged employees, requested respondents to reinstate said employees to positions held by them on January 25, 1945. Respondents, on said dates, and at all times thereafter, refused to reinstate said employees or any of them to their former or substantially equivalent positions solely because of their membership in the Union.”

Trial Examiner Myers: Any objection?

Mr. Janigian: Yes, I object to this, to all these after-thoughts on the part of the Board's counsel.

Trial Examiner Myers: When I strike the allegations from the Complaint I mean I recommend in my intermediate report that these allegations were not supported because there is no evidence of a strike.

Mr. Janigian: Well, I think you should make a finding if there was or was not a strike. I think we introduced evidence to show that there was a strike; that we have testimony of witnesses, at least one witness, who testified that Mr. Smith said he was coming over to get his men. Mr. Smith went over and got his men. Whether it was technically a strike or cessation of work is one thing; but I do not think Board's counsel should be permitted to patch up a complaint and in effect make a new complaint following the hearing of a case.

Trial Examiner Myers: I will grant the motion. Is there any other motion?

Mr. Royster: The final motion is that all references to paragraph 10 in this complaint be deleted.

Trial Examiner Myers: You do not have any paragraph 10. It has been stricken out.

Mr. Royster: The reason I make that is that in paragraphs 12, 13 and 15, paragraph 10 is mentioned.

Mr. Sapiro: May I suggest that the reference to those will refer to your substituted paragraph 10?

Mr. Royster: There is no substituted 10.

Trial Examiner Myers: What is the motion again?

Mr. Royster: I move that reference to paragraph 10 of this Complaint which has been stricken be deleted from wherever it is mentioned elsewhere in the Complaint.

Trial Examiner Myers: The motion is granted.

Mr. Royster: I have a further motion, Mr. Examiner, to conform the pleadings to the proof.

Mr. Janigian: I object to any such motion. Now, that is a blanket motion. If it has to do with dates and situations, I mean clerical errors or some such thing as that, I have no objection; but if he means to change the substance of the Complaint by throwing in everything that came in by way of evidence, I object to it. I would like to know in what respect he wishes to amend it.

Mr. Royster: I should have been more specific, of course. [344] The usual motion, Mr. Janigian, to conform the pleadings to the proof in matters as names, dates, places, immaterial matters.

Mr. Janigian: Then I have no objection.

Trial Examiner Myers: The motion is granted without objection. That is, you are conforming the pleadings, is that it?

Mr. Royster: The pleadings.

Trial Examiner Myers: The motion was addressed to conform the pleading to the proof with respect to the matters stated by you?

Mr. Royster: Yes, sir.

Trial Examiner Myers: Any other motions, gentlemen?

Mr. Janigian: At this time I would like to make a motion to dismiss on behalf of the Bay Cities Metal Trades Council on the ground that the evidence does not prove violation of any of the provisions of the National Labor Relations Act; that the evidence does not prove that the agreement which was entered into——

Trial Examiner Myers: Are you going into oral argument now?

Mr. Janigian: No, no, just the grounds.

That the evidence also does not show, in fact the evidence affirmatively shows that the agreement entered into between the Council and the employer in this case is valid and that [345] it covers employees which the Board has repeatedly recognized as an appropriate unit, to-wit: all production and maintenance employees in the shipyards.

For those reasons we move to dismiss all of the complaint.

Trial Examiner Myers: I will reserve decision. Any other motions?

Will you proceed with your oral arguments?

ORAL ARGUMENT ON BEHALF OF THE
NATIONAL LABOR RELATIONS BOARD

Mr. Royster: I shall address myself first, Mr. Examiner, to the question of the appropriate unit for bargaining at the respondent's operation with respect to machinists.

The Board contends that the machinists at the Graham Ship Repair Company constitute an appropriate bargaining unit and as evidence to support that motion the history of bargaining in Alameda County, from 1936 at least, has been on the basis that machinists in ship repair yards without exception given in evidence in this hearing, are represented separately for the purposes of collective bargaining.

Now, the yard which the respondent operates went into operation, I believe, in the month of May, 1943, when Mr. Johnson of the Judson-Pacific War Industries, opened it. During the time that the Judson-Pacific Company operated from May, 1943, until the end of January, 1944, machinists were represented [346] in a separate bargaining unit, and the remainder of the what you might call production and maintenance employees, the hourly-rated workers, were represented in another unit.

The machinists, as the evidence will show, have high skill, their work is of a nature that is performed only by them, they are not called upon to do work other than machinists' work and other craftsmen in the yard are not required to do the work of the machinists.

This question of the propriety of a separate bargaining unit for machinists in the shipyards in the Bay area has been a matter of controversy before and the Rosenshine Award, to which reference has been made in this proceeding, recognized that machinists constitute a separate bargaining unit in ship repair yards. To the same effect is the Board decision in the Bethlehem-Alameda Shipyard, Inc., 53 NLRB 999, which directed a globe election among the machinists whereby they could determine whether or not they desired to be represented for the purposes of collective bargaining in a craft unit or in the overall industrial unit.

The respondent here, the Board argues, was bound to recognize and to deal with Local 1304 as bargaining representative of the machinists at its yard. For these reasons, while it is not argued by the Board that there was such privity between the respondent and Judson-Pacific War Industries as would make it incumbent upon the respondent to carry out the [347] terms of the collective bargaining agreement between Judson and Local 1304, nonetheless the unit of machinists continued.

Three machinists, according to the evidence, had no break in their employment from Judson-Pacific War Industries or Walter W. Johnson, whichever it was to the respondent. Mr. Lehaney testified that other personnel were carried on over. Mr. Close, I believe he mentioned Mr. Richards and there is no other evidence in the record that some few maintenance employes worked right along for

Judson-Pacific or Johnson and were carried right through onto the payroll of the respondent here.

Now, in that situation the bargaining unit established by the workers at the—I will say the predecessor company, not meaning to imply any privity between the two—continues and it becomes the obligation of the new employer to continue the recognition in so far as the bargaining unit is concerned, and also in so far as the bargaining agent is concerned, unless there is reason for that new employer to believe that the affiliation of the men involved has been changed.

Now, in the case here there was no such indication given to Mr. Graham. The Board has recently given a decision of a somewhat similar case, the South Carolina Granite Company, et al., Case No. 10-C-1417, decided October 28, 1944, where it held that an employer who took over a quarry from a prior owner, leased it, was required to deal with and bargaining [348] with the bargaining representative of the employees who were taken over along with the quarry, although there again there was no privity between the new owner and the prior owner which bound the new owner by the contract made by the prior owner.

Now, Mr. Graham said he wanted to bargain with the machinists, with Local 1304 for the machinists here and had Mr. Close call Mr. Smith several times and could not get Mr. Smith to answer. Be that as it may, Mr. Lehaney, it is undisputed, had complete and unreviewable authority from Mr. Graham to handle matters of labor re-

lations, to enter into bargaining contracts, and Mr. Lehaney said that he had no intention of making any contract with Mr. Smith covering the machinists because he already had a contract with Bay Cities Metal Trades Council which precluded him from doing anything of the sort.

Now, as to that contract with the Bay Cities Metal Trades Council, in the first place it did not cover machinists. Machinists are not mentioned in it anywhere nor has it been construed to cover machinists in any operation in the Bay area. The testimony indicates this agreement is the same agreement which is in effect in other yards in the area; machinists in the other yards are represented in Alameda—I will confine my remarks to Alameda—by Local 1304, and the Council does not consider that their agreement has been [349] violated in that respect.

Now, Mr. Examiner, when an agreement is placed before you and you see that it particularizes boiler-makers, shipwrights, carpenters, painters, so on down the line, no mention of machinists, there is a rather familiar legal maxim which covers such a situation. If it were intended that machinists would be covered, they would have been mentioned in there.

Now, furthermore, even though the parties have given this contract effect so as to cover machinists and thus may argue that the document, which does not speak for itself so as to cover machinists has been orally amended or enlarged so as to cover machinists, it could not have covered machinists

for the reason the Council had never been designated as collective bargaining representative of the machinists at the yard. The testimony shows, and I believe it has been stipulated, as a matter of fact, that all machinists there were members of Local 1304 from the second day of January through the 25th of January. They certainly had not designated the Bay Cities Metal Trades Council to represent them in matters of collective bargaining, and the Metal Trades Council had no authority to enter into a contract affecting them.

Following the argument of the Board that the machinists constitute a separate appropriate bargaining unit and that the contract did not cover the machinists, it followed, of course, that the discharges on January 25, 1945, were unlawful. [350] To be lawful they would have had to have been made in accordance with the terms of the valid closed-shop agreement and certainly such an agreement did not exist here with respect to the machinists. It is doubtful that within the meaning of the term as we use it in the Act and decisions of the Board that the contract was valid at all. It was made according to the undisputed testimony of the witnesses on the second day of January, at a time when, on the payroll of the respondent, there appeared names of 8 hourly-rated employees. Mr. Lehaney, or I believe it was Mr. Rotel, testified that it was his understanding that perhaps 850 employees would find work at the Graham Ship Repair Company. Certainly if an employer came to San Francisco, opened up a brand new operation, put 8 em-

ployees on the payroll intending to hire 850 and then entered into a closed shop agreement with a labor organization, the Board would not consider it a valid agreement.

If the Bay Cities Metal Trades Council contract on January 2nd, 1945, was a valid contract, it is valid only on the theory that the respondent here had an obligation to deal with the Council as representative of its hourly-rated employees other than machinists, because the Council had been the bargaining representative of the hourly-rated employees of the Judson-Pacific War Industries. It under no theory, to my opinion, can be held to be a valid collective bargaining agreement [351] covering the machinists at the respondent's yard.

Now as to three of the alleged 8(3's), I wish to make some comment. Those three are Wall, Whatley and Lee. Each of these men was hired according to Mr. Hostetler, by Mr. Hostetler on the 25th day of January, 1945, and expected to go to work on the 26th of January. On the afternoon of the 25th, as the record will show, Mr. Hostetler was advised—I have forgotten just what words he used, but at any rate, that the CIO machinists would no longer be employed in the yard. Mr. Hostetler testified he got word to Wall, Whatley and Lee what had developed there and as a consequence they did not report to work on the 26th.

It is the contention of the Board that Wall, Whatley and Lee were discriminated against with respect to their hire and employment within the

meaning of Section 8(3) of the Act and that the finding of these three should not differ in any respect to the finding concerning the eleven employees who actually worked for the respondent on that date.

I believe that is all.

Trial Examiner Myers: Mr. Sapiro, do you wish to say a few words?

Mr. Sapiro: Well, if the Examiner please, the highlights of the points that are involved here have been covered by Mr. Royster and it would be just a waste of time for me to go over the same things, but I would respectfully request, [352] and I know the Examiner will read the two decisions involving this particular contract which has been characterized by two of the witnesses as a closed-shop contract. Those two decisions answer in detail——

Trial Examiner Myers: You mean Bethlehem?

Mr. Sapiro: Bethlehem and Rosenshine decision, and I do not know whether the Examiner has that. I would be glad to furnish that.

Trial Examiner Myers: I have not the Rosenshine.

Mr. Sapiro: I will submit our copy in connection with the argument. I will submit that. This is the only copy we have, and may I request the Examiner when he is quite finished with it that he return it.

Trial Examiner Myers: Who granted that decision?

Mr. Sapiro: Well, it was rendered by Albert A. Rosenshine, Special Board Representative of

the National War Labor Board, and was incorporated thereafter by formal Order putting it in force and effect. The Order, I think, adopted it without going into detail.

Mr. Janigian: Yes, but you will stipulate that that Order and that decision had no reference to the Judson-Pacific yard.

Trial Examiner Myers: He is just calling my attention to a decision just like he would call my attention to a Court decision. [353]

Mr. Sapiro: That is correct.

Mr. Janigian: As an authority?

Mr. Sapiro: As an authority, certainly. We can quote any case.

Mr. Janigian: The Trial Examiner is the judge of the weight of all authorities.

Mr. Sapiro: Certainly he is.

Trial Examiner Myers: Thank you.

Do you wish to say anything, Mr. Stimmel?

Mr. Stimmel: Yes, I would like to say a word or two.

Trial Examiner Myers: I would appreciate what you would say. I would like to get your ideas about this case.

Mr. Stimmel: That Mr. Lehaney received no authority to sign a contract, I think the evidence will show that until around January 6th, at which time he received a limited authority to sign an A.F.L. contract and that Mr. Close was to sign the C.I.O. contract. [354]

That the contract which Mr. Lehaney signed, if

he did sign it, and he did, exceeded his authority in regard to the C.I.O. machinists.

Trial Examiner Myers: Is it your contention that the contract with the A. F. of L. Council did not cover the machinists at the respondent's operation?

Mr. Stimmel: That the contract which Mr. Lehaney was authorized to sign was the same type of contract that was in the other yards in the East Bay district and that he was instructed specifically at that time that Mr. Close was the authorized agent to sign the C.I.O. contract and that circumstance was brought out in the evidence by the testimony of Mr. Lehaney himself who stated that when he was told to sign a contract with the A.F.L. and the C.I.O., he demurred to it, stated he could not sign a C.I.O. contract because he was a high official of the A. F. of L. and that he suggested Close sign such a contract.

Trial Examiner Myers: But my question is, and I am just thinking out loud when I am discussing this, I have not come to any conclusion whatsoever, as to the facts in the case—is it your contention that the agreement with the Council does not cover machinists?

Mr. Stimmel: Yes.

It is also our contention that the Graham Company did not refuse to bargain with the C.I.O.; that they specifically [355] made a request for a contract not only once, but numerous times; that on the 15th of January Mr. Smith promised to sign a contract and date it back to January 12th.

But he failed to produce the contract, signed, or to demand or ask that the contract be signed by the Graham Ship Repair Company.

That the Graham Ship Repair Company employed only C.I.O. machinists from January 2nd to January 25th.

That Mr. Smith was always ready and willing to sign a contract. That his authority has never been cancelled by Mr. Graham.

Trial Examiner Myers: Why did he discharge the employees, the C.I.O. employees on January 25th?

Mr. Stimmel: Well, on January 25th Mr. Lehaney stated to Mr. Graham that the A. F. of L. had notified him that he would either have to start hiring A. F. of L. machinists in the future or they would pull the yard.

Trial Examiner Myers: Who would pull the yard?

Mr. Stimmel: A. F. of L.

Trial Examiner Myers: What does the expression "pull the yard" mean?

Mr. Stimmel: They would recall their men, all of the A. F. of L. crafts from the yard. That came out in the testimony.

Thereafter, Mr. Lehaney issued instructions that Mr. Close follow that Order. [356]

Trial Examiner Myers: And discharge the CIO?

Mr. Stimmel: No, he did not do that. At five o'clock he notified the head machinist that hereafter only machinists with A. F. of L. cards would be employed or hired, I would say.

Trial Examiner Myers: Who notified?

Mr. Stimmel: The head machinist. Mr. Close notified the head of the machinist crafts.

Trial Examiner Myers: What else did he tell him?

Mr. Stimmel: Well, he told him that hereafter only men who carried an A. F. of L. card would be employed in the future.

Mr. Janigian: Might I interject this observation, Mr. Trial Examiner, that since the statements of counsel do not appear in evidence, if he wishes to give testimony he ought to be sworn.

Trial Examiner Myers: This is just all argument, not even really oral argument. It is more an informal discussion. What Mr. Stimmel says now is not evidence, not going to be construed as evidence.

Mr. Janigian: But what I mean there is no testimony as to what Close said, that is what I am getting at.

Mr. Stimmel: I believe Mr. Close made a statement. It is in evidence there and we will stick with the record as it were. [357]

That shortly thereafter the men went into a conference, notified the head of the machine shop, and Mr. Close through them that they would not and could not work alongside of A. F. of L. machinists, and when the quitting time came at seven o'clock they went off shift and thereafter nobody showed up for work the next day.

It is our contention that the men struck or aban-

doned their positions. They were not fired or laid off.

It is also our position that the Union, having failed—that is, the CIO Union having failed to sign a contract or present one, although requested several times to do so, hardly represented these machinists and the company proceeded to deal with the men individually, but no man presented himself for his position or reinstatement after the 25th of the month or since.

That the Graham Ship Repair Company, as stated before, was willing and still is willing to bargain with the C.I.O. union.

That the contract made with the A. F. of L. does not cover the machinists and that Mr. Lehaney exceeded his authority if he attempted to include it in that contract.

That is our position. That is all.

Trial Examiner Myers: Mr. Janigian.

ORAL ARGUMENT ON BEHALF OF THE COUNCIL

Mr. Janigian: Mr. Trial Examiner, we have had some [358] surprises in this case, but I think the greatest surprise was Mr. Stimmel's statement as to the coverage of this A. F. of L. agreement. I want to make an observation with respect to that statement before I answer Mr. Royster.

Trial Examiner Myers: I might ask Mr. Stimmel if by that offer to bargain with the C.I.O. does he also offer to reinstate the fourteen persons

named in the Complaint to their former position or substantially equivalent position?

Mr. Stimmel: I might state to the Court that at the time this crisis arose and this notice was given to the machinists, a conference was held also with the A. F. of L. immediately following that at which time both Unions were pressing for action there in their favor and Mr. Graham told Mr. Smith, according to what Mr. Graham told me, that inasmuch as things have come to what they have, why he was not going to do anything one way or the other, that he would leave it to the National Labor Relations Board to settle, and whatever their decision was he would abide by.

He also passed that information on to the A. F. of L. at his meeting with them, and that is his position at this time.

Trial Examiner Myers: Very well.

Mr. Janigian: Mr. Trial Examiner, I think the evidence is crystal clear on the proposition that, first of all, Mr. Graham authorized Mr. Lehaney to sign the contract, that he had appointed Mr. Lehaney as his labor relations director. [359]

It is also quite clear that Mr. Graham knew nothing about the existence of the C. I. O. Union 1304 until sometime prior to the 5th and after the 2nd. That is Mr. Graham's own statement.

Mr. Stimmel: The 5th, I believe I may volunteer that.

Mr. Janigian: Now, the evidence is also quite clear that Mr. Graham admitted at this meeting that he had with Mr. Smith, Mr. Lehaney and

others on the 16th, that he had an agreement with the A. F. of L. and that agreement covered the machinists and consequently he could not sign another agreement with Mr. Smith. That is in the record. It is almost in that same language. That is Mr. Graham's statement, so this statement by counsel that Mr. Lehaney did not have any authority to sign the agreement or that our agreement could not cover machinists is somewhat of a surprise and something that certainly the evidence does not support.

All of the actions on the part of the Graham Ship Repair Company have been consistent with the acknowledgment by them of the fact that the agreement did cover all production and maintenance employees, including machinists. The complaint by the Bay Cities Metal Trades Council that C. I. O. machinists were employed, that the decision finally to replace C. I. O. machinists with A. F. of L. machinists and the A. F. of L. machinists being actually put to work on the 25th and the cessation of work on the part of C. I. O., all that is consistent [360] with what has been testified to by all the witnesses, that an agreement was signed first on the 2nd and again on the 9th, 10th or 11th, a week or so later, and that agreement was intended to cover all employees.

Now, Mr. Royster makes some statement that the agreement could not cover machinists. He had reference to the agreement, which is in evidence as Council's, I think, Exhibit 1, and again as Exhibit 4, the so-called "Master Ship Repair Agree-

ment." Now, when we consider the discussions had from the very beginning and we have in mind the discussions on the 4th, when the whole subject of the conference that was had at the office of the Bay Cities Metal Trades Council was the question of the machinists, whether the A. F. of L. could furnish the sufficient number of machinists, I cannot conceive of there being any doubt in anyone's mind but that the agreement was intended to cover machinists.

Now, Mr. Royster would lead you to believe that in all of the shipyards there is a separate agreement covering machinists. Well, I do not know if Mr. Royster knows the facts, but the evidence indicates that the Master Agreement covering new ship construction and the Master Ship Repair Agreement is signed by all the yards in this area and Mr. Rotel named a long string of yards, but he did admit that with respect to a certain number of named yards in Alameda County the Council did not represent the machinists. But that [361] is something entirely different from the contention which the Board is now making, that in all the yards the Council's Agreement does not cover machinists. The Council's agreement certainly does cover machinists.

Now, I think the issues in this case are quite simple. A great deal of time has been taken in developing the testimony. I have been guilty probably for some of the delay because of my inability to get Mr. Lehaney, but when you read the complaint you see that the issue presented is the ques-

tion of whether or not all of the production and maintenance employees constitute an appropriate unit, including machinists, and whether the machinists and persons who fall in that category, including helpers, trainees, etcetra, constitute an appropriate unit.

Now, it is very elementary that we have been called in to answer this complaint. Despite the attempt to amend the complaint we still are confronted with the allegations contained in the complaint. It cannot be expanded, they are definite allegations in the complaint charging violations of the National Labor Relations Act.

Now, the complaint states in so many words that the machinists constitute the unit; that a contract which seeks to include machinists with other production employees covers a unit which is not appropriate for collective bargaining.

Now, I am willing to concede that machinists under many [362] circumstances constitute an appropriate unit. The Board's own decisions show scores and scores of cases where machinists have been certified on the basis of their showing that they represent a distinct craft. The work of machinists is concededly the work of skilled, trained mechanics, and they constitute a craft.

On the other hand, the many decisions of the Board show that all of the production and maintenance employees in the shipyard constitute an appropriate unit. Now, unless it is shown that at that time the contract was signed the unit was inappropriate under any interpretation made by

the Board under any prior ruling, the Board may not at some subsequent date say, "Well, you signed an agreement which under some circumstances could be considered appropriate, but we do not think it is appropriate because the machinists could also constitute an appropriate unit."

It may well be that the collection of certain crafts would constitute an appropriate unit or a department might under certain circumstances constitute an appropriate unit, but where a contract has been entered into in good faith and if the unit covered is considered an appropriate unit on the basis of the various tests which the Board has laid down on the basis of the provisions of the Act itself, then I do not think that subsequent to the execution of the contract a union may be heard to say, "Well, we think the [363] machinists could constitute an appropriate unit."

Now, if the claim was made prior to the signing of the agreement or if Mr. Graham knew of the disexistence and disclaim of the C. I. O. union, then conceivably it might have been a matter for Board action to determine by an election whether the machinists would constitute an appropriate unit. That was the action taken in the Bethlehem-Alameda case, a case with which I am familiar because I represented the Council in that case. The Board held that in that case that by reason of the background, historical background of the dealings by the company, the Bethlehem Steel Company with Local 1304 over a period of many years, obtaining itself from that union, recognizing the

union for the purpose of discussing grievances and what-not, that the machinists constitute an appropriate unit.

Now, that is not the situation in this case. If the Board were to make the holding that an employer and the union would sign a contract at its peril in every instance and that such contract may be abrogated at the whim of the Board because someone might claim that conceivably some other unit might be carved out of a larger unit, or conceivably that a smaller unit should constitute a part of a larger unit, then we certainly would have no stability in our industrial field because the contract could not be signed with safety before the matter was submitted to the Board and [364] the finding, official finding was made by the Board as to whether or not the unit was appropriate.

As I stated before, the decisions of the Board are replete with numerous instances in which the Board has held that the plant unit is appropriate. The existence of the Master Agreement on the Coast and the fact that all of the yards on the Coast and the yards in the Bay Area have signed that Master Agreement and the decisions by the Board in the Atlantic Coast yards approving of these plant units and in some instances excluding patternmakers, for instance, and I know at least in one instance where molders were excluded on the showing made—but on the basis of those decisions of the Board these persons were perfectly justified in proceeding and signing the agreement which they did, and we submit the agreement is valid. We submit that there

is no issue of the expanding unit in this case because the complaint is not addressed to that issue. The complaint is addressed to the one issue of the appropriateness of the unit—A unit of production and maintenance employees which would also include machinists. That is the whole issue in the complaint. We submit that upon the showing that is made that the complaint should be dismissed.

Trial Examiner Myers: I will reserve decision on the motion to dismiss.

Has anybody else anything to add to what they have already [365] said?

Mr. Sapiro: Simply answering Mr. Stimmel, stating that these men were not discharged, that is, the C. I. O. men, I think the Trial Examiner will remember the testimony that Al Rogers told these men that "You are through. The A. F. of L. is taking over." And that shortly thereafter the same conversation was had with Mr. Close, where he told them they were through.

Now, I will submit that is a discharge.

Now, Mr. Janigian, in his fluent or fluid way, has made an argument which is quite cold, which might have been addressed at one time to some governmental agency having jurisdiction as to what an appropriate unit in the Bay Area is for collective bargaining, especially where machinist are concerned. I say that that question is foreclosed as to the Bay Area, and when he made the statement, Mr. Janigian made the statement that in so far as this record is concerned there is no showing as to how many plants in the jurisdiction of 1304 that

operate under this particular Master Contract where the C. I. O. have either written contracts or oral contracts, I call the Examiner's attention to the testimony of Mr. Rotel. On cross-examination I took the shipyards, repair shipyards in the East Bay Area and called his attention to them one by one, and in each instance he admitted that in those cases, in those named cases there was this so-called Master Agreement and that the C. I. O., 1304, had separate agreements, and when the Trial Examiner asked him whether or not he considered that a violation of the Master Agreement he stated that which was a fact, that owing to the litigation, to the various times that ship repair agreement had been construed they acceded to the ruling.

Now, what makes this case different from that than the circumstances surrounding, the other conditions, I do not know, but the Trial Examiner will remember when Mr. Truax was on the stand I put the question to him directly whether he knew of any yards in Alameda County ship repair or new construction that employed A. F. of L. machinists and he said yes, he knew of the Graham Ship Repair Yard, and he knew of no other, and that is the fact. That stands undenied in the record.

Trial Examiner Myers: Mr. Stimmel, do you want to add anything to that which you have already said?

Mr. Stimmel: Nothing except to call the Board's attention to the fact that as late as January 4th at a conference between Graham, Lehaney, Rotel and Truax that Mr. Truax and Rotel stated that

the Metal Trades were under no obligations to Graham until and unless he signed a Master Contract for that yard the same as other yards had in the district.

Trial Examiner Myers: Mr. Stimmel, you have not filed an answer on behalf of the respondent, Graham Ship Repair. I [367] was wondering whether you concede that the Board has jurisdiction over Graham Ship Repair.

Mr. Stimmel: Well, I still think our objection is good, Graham is not engaged in interstate business. The ships that are delivered there, he does not know whether they come from.

Trial Examiner Myers: The reason I asked you that, you said during oral argument you were willing to submit the matter to the Board for decision.

Mr. Stimmel: Well, I will withdraw my objection to the jurisdiction then.

Trial Examiner Myers: You concede the jurisdiction of the Board?

Mr. Stimmel: Yes.

Mr. Royster: I believe I will say this, Mr. Examiner, I would like to direct the Examiner's attention to this circumstance: that Mr. Lehaney testified on the first occasion when he spoke to Mr. Rotel and before a contract was signed Mr. Rotel told Lehaney that other yards in the Bay Area coming under this Master Agreement had their machinists represented in a separate unit, but that Graham coming in here this was a new proposition, in some undefined way it was different, and

in this case why the machinists would come under the Master Agreement. [368]

It is my recollection that this information was given to Mr. Lehaney, the agent of Graham Ship Repair Company, before there was any contract signed.

Mr. Sapiro: By his own testimony, I think he said something like that.

Trial Examiner Myers: Do you want to add something, Mr. Janigian?

Mr. Janigian: Nothing except this: that we are anxious to obtain a ruling on this proposition. I mean if it is the law and if it is to be the decision of the Board that the interests of the crafts are to be protected even after a contract is signed, including or covering a unit which the Board has recognized in other decisions as an appropriate unit, we want to know about that.

I have nothing else at all.

Mr. Sapiro: Just one word; Mr. Smith called my attention to that at the time of the so-called signing of this contract the A. F. of L. did not have a single member of the machinists' craft in their employment. [369]

[Endorsed]: No. 11267. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. W. C. and Agnes Graham, doing business as Graham Ship Repair Co., Respondents. Transcript of Record. Upon petition for enforcement of order of the National Labor Relations Board.

Filed March 6, 1946.

/s/ PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11267

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

W. C. and AGNES GRAHAM, doing business as
GRAHAM SHIP REPAIR CO.,
Respondents.

ANSWER OF THE BAY CITIES METAL
TRADES COUNCIL, A. F. OF L., PARTY
TO CONTRACT, TO PETITION FOR EN-
FORCEMENT OF ORDER OF NATIONAL
LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Cir-
cuit:

Comes now the Bay Cities Metal Trades Council,
A. F. of L., party to contract, hereinafter referred
to as Council, and answering the petition for en-
forcement of an order of the National Labor Re-
lations Board herein, admits, denies and alleges:

1. Answering the allegations of paragraph (1)
of said petition, Council admits the allegations con-
tained in said paragraph.

2. Answering the allegations of paragraph (2)
of said petition, Council admits that under date of
September 12, 1945 the National Labor Relations

Board, hereinafter referred to as the Board, issued its decision and order, a portion of which is set forth in said paragraph and in that behalf Council alleges that the said decision and order are and each of them is illegal and void and were made in excess of the jurisdiction of the Board.

Further answering said petition Council alleges:

1. That the said decision and order and every finding of fact and conclusion of law contained therein, are and each of them is against law and are not supported by substantial or any evidence in the particulars and for the reasons set forth in Exceptions of the Bay Cities Metal Trades Council, A. F. of L., filed with said Board.

2. That by reason of adverse rulings on the part of the Trial Examiner and the Board, Council was denied a fair and impartial hearing and was thereby prevented from properly presenting its defense or having its day in court and that the said adverse rulings prejudiciously affected the substantial rights and interests of Council and were and each of them was erroneous and against law.

3. That each and every purported finding, conclusion or order contained in said decision and order which relates or refers to alleged violations on the part of respondent of any of the provisions of the National Labor Relations Act is not supported by substantial or any evidence and is contrary to the evidence.

4. That paragraph 1(a) of the Board's order is

unlawful in that it would require respondent not to discourage membership in East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, hereinafter referred to as Local 1304, or refusing to employ any member of said labor organization, by conditioning further employment upon membership in the Bay Cities Metal Trades Council, A. F. of L., for the reason that under the terms of a contract dated January 2, 1945, entered into by respondent with Council, membership in the Council was a condition of employment by respondent; that the said contract was entered into when the Council was the lawful exclusive representative of the employees of respondent within the meaning of Section 9 of the Act and the Council at said time was not a labor organization established, maintained or assisted by any action defined in said Act as an unfair labor practice; and that each and every finding, conclusion or order to the effect that said Council was nor or is not the lawful exclusive representative of said employees of respondent within the meaning of Section 9 of the Act or was a labor organization established, maintained or assisted by any action defined in said Act as an unfair labor practice is not supported by substantial or any evidence and is contrary to the evidence.

5. That said order is unlawful in that it would forbid the recognition by respondent of Council as the exclusive representative of its employees for the purposes of collective bargaining despite the fact that said Council was, and is, the lawful rep-

representative of the employees of respondent as set forth in the preceding paragraph.

6. That said order is unlawful in that it would abrogate contract between respondent and said Council dated January 2, 1945 on the erroneous finding that at the time the contract in question was entered into said Council was not the lawful, exclusive representative of the respondent's employees within the meaning of Section 9 of the Act and that any finding, conclusion or order that the Council was not or is not the lawful exclusive collective bargaining representative of the employees of respondent is not supported by substantial or other evidence.

7. That any finding, conclusion or order to the effect that Local 1304 was or is the exclusive representative of certain employees of respondent referred to in paragraph 1(d) of said order is not supported by substantial or any evidence and is contrary to the evidence and the provision of said order which forbids respondent to refuse to recognize and bargain with Local 1304 as such representative and which would compel respondent to bargain with Local 1304 as such representative are and each of them is unlawful.

8. That any finding, conclusion or order to the effect that respondent has or is now urging, persuading, intimidating or coercing its employees to join the Council and not to join Local 1304 or any other labor organization is not supported by substantial evidence except that the collective bargain-

ing agreement referred to in paragraph 4 hereof has been enforced.

9. That any finding to the effect that respondent locked out or discriminatorily discharged any of its employees or refused to rehire such employees except as it enforced the provisions of said agreement between respondent and the Council is not supported by substantial or any evidence.

Wherefore the Bay Cities Metal Trades Council, A. F. of L. prays that this Court deny the said petition of the National Labor Relations Board and that the said decision and order of the National Labor Relations Board be set aside and annulled.

/s/ CHARLES J. JANIGIAN,

Attorney for Bay Cities Metal Trades Council,
A. F. of L.

(Duly Verified.)

[Endorsed]: Filed April 9, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO THE PETITION FOR THE EN-
FORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

W. C. and Agnes Graham, doing business as Gra-
ham Ship Repair Co., a co-partnership, hereinafter

sometimes referred to as Company, answers the petition presented to this Honorable Court for the enforcement of a certain order issued by the National Labor Relations Board, hereinafter sometimes referred to as the Board, against the Company.

The proceedings in which said order was issued by the Board is known upon the records of the Board as Case No. 20-C-1304, the title thereof being, "In the Matter of W. C. and Agnes Graham, doing business as Graham Ship Repair Co. and East Bay Union of Machinists, Local 1304, C. I. O. and Bay Cities Metal Trades Council, A. F. of L., Party to the Contract, Case No. 20-C-1304."

In answer to the said Petition of the Board to this Honorable Court, the Company respectfully:

I.

Admits the allegations contained in Paragraph 1 of the Petition.

II.

Admits that the Order set forth in Paragraph 2 of the Petition was made and issued by the Board and filed with this Court, but denies any knowledge or information sufficient to form a belief as to whether said Order was based upon all of the proceedings had in said matter before the Board, and denies that the Board duly stated its Findings of Fact, Conclusions of Law and/or thereupon issued an order directed to the Respondents, their agents, successors and assigns.

Respondents further deny the commission of any unfair labor practices as therein alleged; Respondents further allege that said Findings of Fact, Conclusions of Law and Order, are and each of them, is illegal and void in that the Board acted without and in excess of its powers and jurisdiction in the making thereof.

III.

Admits the allegations of Paragraph 3 of said Petition.

IV.

Admits the allegations of Paragraph 4 of said Petition.

V.

In further answer to the Petition of the Board Respondent respectfully alleges that the Findings of Fact and Conclusions of Law made by the Board are unsupported by adequate or substantial evidence; in further answer to the Petition the Company respectfully alleges that the Findings of the Board and the Conclusions of Law upon which the following orders were issued to the Company are unsupported by adequate or substantial evidence and are contrary to the evidence:

1. That the Company cease and desist from:

- (a) Discouraging membership in East Bay Union of Machinists, Local 1304, affiliated with Congress of Industrial Organizations, or in any other labor organization of their employees, by laying off, discharging or refusing to reinstate any of their employees, by refusing to employ any

member of the said labor organization, by conditioning further employment upon membership in Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or by discriminating in any other manner in regard to their hire and tenure of employment, or any term or condition of their employment;

(b) Recognizing Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, as the exclusive representative of the employees in the appropriate unit described in paragraph 2 (c) of this Order.

(c) Giving effect to their contract, dated January 2, 1945, with the Bay Cities Metal Trades Council, affiliated with the American Federation of Labor, or to any extension, renewal, revision, modification or supplement thereof or to any superseding contract which may now be in effect, insofar as it affects their employees in the appropriate unit described in paragraph 2 (c) of this Order.

(d) Refusing to bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of their employees in the appropriate unit described in paragraph 2 (c) of this Order, with respect to rates of pay, wages, hours of employment and other conditions of employment.

(e) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist East Bay Union of

Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Taking the following affirmative action:

(a) Offer to Frank E. Shaffer, James E. Potter, Elga O. Ashcraft, Gus B. Berness, Thomas F. Wright, Benjamin F. Clark, Jim H. Clark, William (Bill) Searing, E. P. Hostetler, C. B. Lewis, Albert B. Sequeira, Daniel C. Wall, Willis H. Whatley and Lloyd M. Lee immediate and full reinstatement of their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the employees named in paragraph 2 (a) of this Order for any loss of pay they may have suffered by reason of the Respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of the Respondents' discrimination against him to the date of the Respondents' offer of reinstatement, less his net earnings during such period.

(c) Upon request, bargain collectively with East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all the Respondents'

machinists, machinist helpers, machinist specialists, machinist apprentices, and machinist trainees, but excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(d) Post in their ship repair yard at Oakland, California, copies of the notice attached hereto marked Appendix "A". Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondents' representative, be posted by them immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondents to insure that said notices are not altered, defaced or covered by any other material;

(e) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

Respondents further deny the commission of any unfair labor practices as herein alleged or intimated.

VI.

In further answer to the said Petition of the

Board Company respectfully alleges that the Board has acted without and in excess of its powers in making and entering its Findings of Fact, Conclusions of Law and Order in this matter by reason of the lack of adequate or substantial evidence to support same.

VII.

In further answer to the said Petition of the Board Company respectfully alleges that the evidence affords no reasonable basis for the Conclusions of the Board, as embraced within its Findings of Fact, that there were unfair labor practices on the part of the Company against East Bay Union of Machinists, Local 1304, affiliated with the Congress of Industrial Organizations, or any of the members thereof.

VIII.

In further answer to the petition of the Board Company respectfully alleges that said decision and order and every finding of fact and conclusion of law contained therein, are and each of them is against law.

IX.

In further answer to the Petition of the Board Company respectfully alleges that said decision and order and every finding of fact and conclusion of law, are and each of them is contrary to evidence.

X.

In further answer to the said Petition of the Board the Company respectfully alleges: That throughout the proceedings before the Board Com-

pany has consistently taken the position that it would abide by any lawful order of the Board; that upon consideration of the transcript of the entire proceedings before the Board, including the pleadings, testimony and evidence, Findings of Fact, Conclusions of Law and Order of the Board, the Company is advised and therefor respectfully alleges that same are unlawful in that the said Board acted without, and in excess of, its powers in making its said Findings of Fact and Conclusions of Law and Order in this matter by reason of the lack of adequate or substantial evidence to support same;

That for the above reasons Company respectfully requests that it be heard before this Honorable Court and be granted the right to resist the enforcement of said Order of the Board filed herein, which it believes to be unlawful and without and in excess of the powers of said Board to issue against said Company by reason of the lack of adequate and substantial evidence supporting said order on the matters hereinabove set forth which will hereafter be more particularly set forth in briefs to be filed herein.

Wherefore, the Company prays this Honorable Court that it set aside the Order of said Board in whole, or, if such prayer be denied that it set aside the said Order of said Board in such part as the same is unsupported by evidence, as hereinabove in this Answer sets forth with particularity, and insofar as to set aside, that the Court relieve the Com-

pany, its officers, agents and representatives, of any necessity to comply therewith.

HARDIN, RANK, METZLER

& FLETCHER,

By /s/ HERMAN COOK

/s/ BERNARD STIMMEL

Attorneys for Respondents.

(Duly Verified.)

[Endorsed]: Filed April 18, 1946. Paul P.
O'Brien, Clerk.

